

# **EXHIBIT 11**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE  
CIVIL ACTION NO. 02-2917 (JEI)

PATRICK BRADY, et al.,  
Plaintiffs,  
vs.  
AIR LINE PILOTS ASSOCIATION,  
INTERNATIONAL,  
Defendant.

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January 23, 2013  
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Continued oral sworn videotaped  
deposition of HENRY FARBER. Ashenfelter & Ashmore,  
32 Nassau Street, Princeton, New Jersey 08540 was  
taken at the law office of Archer & Greiner, 700  
Alexander Park, Princeton, New Jersey, before Jean  
B. Delaney, Certified Shorthand Reporter and Notary  
Public of the State of New Jersey, on the above  
date, commencing at 9:30 a.m., there being present:

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2

3

I N D E X

1	Witness	Page
2	HENRY FARBER	
3	By Mr. Toal	4
4	E X H I B I T S	
5		
6		
7	Marked for I.D.	Page
8	Farber-12 Congressional hearing transcript	65
9	Farber-13 April 2nd, 2001 decision from the United States Bankruptcy Court, District of Delaware	75
10	Farber-14 Rough copy of the transcript of Bill Compton	81
11	Farber-15 Copy of the arbitration decision concerning Continental Airlines and Texas International	97
12	Farber-16 Copy of the arbitration decision regarding the FederalExpress/Flying Tigers	99
13	Farber-17 July 12, 1991 article from the New York Times entitled Pan Am Agrees To Sell	116
14		
15		

4

1

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2

1

**VIDEO SPECIALIST: Today is  
January 23rd, 2013, and this is the continued  
videotaped deposition of Henry Farber. We are now  
going on the record and the time is 9:30.**

**Would the court reporter please swear in  
the witness?**

**HENRY FARBER, having been duly sworn,  
was examined and testified as follows:**

**BY MR. TOAL:**

**Q** Good morning, Professor Farber.

**A** Good morning.

**Q** Professor, in this case are you  
offering an expert opinion as to whether, in the  
absence of a transaction with American Airlines, TWA  
would have been able to continue to fly?

**A** No.

**Q** Did you do anything to analyze that  
question?

**A** Yes.

**Q** So you -- you made a judgment in this  
case that TWA should be categorized as an airline  
that was not in danger of ceasing operations  
imminently; correct?

**A** Yes.

**Q** And can you describe what your

2

1 (Pages 1 to 4)

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<p style="text-align: right;">5</p> <p>1 methodology was for making that assessment?</p> <p>2     <b>A</b> Yes. TWA was still flying. They were</p> <p>3 not -- they were ordering aircraft. They were not</p> <p>4 laying off. They were hiring a little bit, a little</p> <p>5 bit. They -- it -- it didn't-- I don't know how to</p> <p>6 say this. There -- it was clear there were other</p> <p>7 people interested in their assets. They were in</p> <p>8 negotiation. I -- I think I read they were in</p> <p>9 negotiation with Boeing about restructuring the</p> <p>10 payments they owed, and it seemed to me that they</p> <p>11 were in far better shape than many of the airlines</p> <p>12 that you see.</p> <p>13     For example, in my table one toward the</p> <p>14 bottom, some of those had ceased flying already, and</p> <p>15 that's -- that's basically what I decided. They</p> <p>16 were still flying and were not -- I did not -- I did</p> <p>17 not examine -- I did not examine their balance sheet</p> <p>18 or their income statements and do a financial</p> <p>19 analysis of -- of what was going on. I was looking</p> <p>20 at the facts, that they were apparently not in</p> <p>21 the -- in what I would call an output free fall,</p> <p>22 canceling routes and so on.</p> <p>23     <b>Q</b> Okay. You said your understanding was</p> <p>24 that TWA was ordering aircraft; is that correct?</p> <p>25     <b>A</b> Well, they had. They had aircrafts on</p>	<p style="text-align: right;">7</p> <p>1 their operations. I -- this was sort of general</p> <p>2 background reading. I don't have specific sources</p> <p>3 to cite. And it ought to be in the materials we</p> <p>4 provided.</p> <p>5     <b>Q</b> And you said your understanding was</p> <p>6 that TWA was hiring during this period?</p> <p>7     <b>A</b> Yes. I believe if you look at the</p> <p>8 seniority list just prior to the acquisition, there</p> <p>9 are some people on the list who have hire dates that</p> <p>10 are very -- very close to the -- to the date of</p> <p>11 acquisition.</p> <p>12     <b>Q</b> And how many pilots had TWA recently</p> <p>13 hired?</p> <p>14     <b>A</b> I don't know. I'm just saying it</p> <p>15 wasn't -- it didn't appear to me that -- there are</p> <p>16 -- there are some airlines that I looked at, looked</p> <p>17 at their mergers where there was no one on the</p> <p>18 seniority list who had been hired in the last</p> <p>19 several years, and I don't think that was the case</p> <p>20 here. I don't -- I wasn't -- didn't do a full</p> <p>21 analysis of hiring. This is not based -- this</p> <p>22 decision is not based on a full analysis of all the</p> <p>23 aspects of -- of TWA's finances or employment. It</p> <p>24 was simply based on -- I don't know how to describe</p> <p>25 it -- the kind of -- I want to call it an</p>
<p style="text-align: right;">6</p> <p>1 order, as I understand, and were leasing aircraft,</p> <p>2 and, you know -- I -- do I know -- they may have had</p> <p>3 aircraft that they ordered a while before. That's</p> <p>4 my understanding.</p> <p>5     <b>Q</b> And how many aircraft do you understand</p> <p>6 they had on order?</p> <p>7     <b>A</b> I have no recollection.</p> <p>8     <b>Q</b> And what was your source for concluding</p> <p>9 that TWA had ordered aircraft?</p> <p>10     <b>A</b> It was just part of my background</p> <p>11 reading.</p> <p>12     <b>Q</b> Do you remember where you read that?</p> <p>13     <b>A</b> No.</p> <p>14     <b>Q</b> Is it in the materials listed?</p> <p>15     <b>A</b> I don't know. I would assume in a</p> <p>16 sense that I -- we tried to list everything we</p> <p>17 looked at.</p> <p>18     <b>Q</b> And do you know anything about the</p> <p>19 terms of those aircraft orders and the circumstances</p> <p>20 under which they could be canceled?</p> <p>21     <b>A</b> No.</p> <p>22     <b>Q</b> And you said TWA wasn't laying off</p> <p>23 employees. What's your -- what's your basis for</p> <p>24 that?</p> <p>25     <b>A</b> Again, I was just reading material on</p>	<p style="text-align: right;">8</p> <p>1 impressionistic reading of the record, of the sort</p> <p>2 that I saw in arbitration reports in other cases.</p> <p>3     <b>Q</b> So is your -- is it true that your</p> <p>4 analysis was not quantitative?</p> <p>5     <b>A</b> Yes.</p> <p>6     <b>Q</b> And you said your understanding was</p> <p>7 that there were others interested in TWA; correct?</p> <p>8     <b>A</b> Yes.</p> <p>9     <b>Q</b> Do you know, of those, how many were</p> <p>10 interested in buying TWA as a going concern and</p> <p>11 hiring TWA's pilots?</p> <p>12     <b>A</b> I don't know the exact terms of the</p> <p>13 interest. Again, I'm thinking of Carl Ichan. Carl</p> <p>14 Ichan. I-C-H-A-N. And what I read in the -- in the</p> <p>15 description of what went on in the -- in the</p> <p>16 bankruptcy hearing from the fellow from Dartmouth.</p> <p>17     <b>Q</b> And is that your only source of</p> <p>18 information for what happened in the bankruptcy</p> <p>19 hearing?</p> <p>20     <b>A</b> Yes.</p> <p>21     <b>Q</b> Just that article from the professor at</p> <p>22 the Tuck School?</p> <p>23     <b>A</b> Yes.</p> <p>24     <b>Q</b> And you -- you indicated that your</p> <p>25 understanding was that TWA was in negotiations with</p>

2 (Pages 5 to 8)

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<p style="text-align: right;">9</p> <p>1 Boeing; correct?</p> <p>2 A I believe I read somewhere that they</p> <p>3 were talking with Boeing about -- about how to deal</p> <p>4 with TWA's -- lease obligations to Boeing.</p> <p>5 Q And do you know anything about the</p> <p>6 terms of those negotiations?</p> <p>7 A No.</p> <p>8 Q Do you know whether they were</p> <p>9 successful?</p> <p>10 A No.</p> <p>11 Q Do you know whether, even if they were</p> <p>12 successful, it would have addressed any of TWA's</p> <p>13 liquidity concerns?</p> <p>14 A Well, I assume they would have</p> <p>15 addressed some of them at least. Success -- that's</p> <p>16 what success would mean. It would mean that they</p> <p>17 would have addressed TWA's liquidity concerns.</p> <p>18 Q Do you know whether they would have</p> <p>19 sufficiently addressed TWA's liquidity concerns that</p> <p>20 it would have been able to pay its debts in the</p> <p>21 ordinary course?</p> <p>22 A No.</p> <p>23 Q And you said your sense was that TWA</p> <p>24 was in better shape than some of the other airlines</p> <p>25 you listed on table one?</p>	<p style="text-align: right;">11</p> <p>1 that labor economists do in the ordinary course of</p> <p>2 their work?</p> <p>3 A No.</p> <p>4 Q Is it something that you feel that you</p> <p>5 have expertise in doing?</p> <p>6 A Yes.</p> <p>7 Q And what -- how do you acquire the</p> <p>8 expertise that allows you to evaluate whether an</p> <p>9 airline was likely to cease flying imminently?</p> <p>10 A Well, I -- I relied on my general</p> <p>11 training as an economist. It wasn't something in</p> <p>12 particular that a labor economist has a particular</p> <p>13 advantage at. But as part of this case, I had to</p> <p>14 figure -- I had to try to figure out where in the</p> <p>15 range of -- of part of my work in this case where in</p> <p>16 the range of airlines undergoing mergers TWA fit.</p> <p>17 Frankly -- anyway, let me leave it at that.</p> <p>18 Q And what aspect of your training as an</p> <p>19 economist gives you expertise in evaluating whether</p> <p>20 an airline is likely to cease operations imminently?</p> <p>21 A Well, as I said, having read</p> <p>22 descriptions of mainly in these arbitration reports</p> <p>23 of -- of quite a range of airlines in various states</p> <p>24 of array or disarray, I got a feeling for what the</p> <p>25 history, what the history was in airlines that were</p>
<p style="text-align: right;">10</p> <p>1 A Yes.</p> <p>2 Q What did you do to analyze the</p> <p>3 likelihood that any of those carriers that were</p> <p>4 still flying were at risk of ceasing operations</p> <p>5 imminently?</p> <p>6 A What I said -- what I meant by that</p> <p>7 statement was there were airlines on the list that</p> <p>8 had actually ceased flying.</p> <p>9 Q So aside from the ones that had</p> <p>10 actually ceased flying, how did you evaluate for any</p> <p>11 airline on the list whether it was likely to cease</p> <p>12 flying imminently?</p> <p>13 A I relied on the arbitrator's</p> <p>14 statements.</p> <p>15 Q Did you do anything beyond looking at</p> <p>16 the arbitrator's statements?</p> <p>17 A No.</p> <p>18 Q Did you evaluate the background of the</p> <p>19 arbitrators in those particular cases to see if they</p> <p>20 had the expertise necessary to evaluate whether an</p> <p>21 airline was likely to cease operations imminently?</p> <p>22 A No.</p> <p>23 Q So this -- this methodology that you've</p> <p>24 described, trying to evaluate whether an airline was</p> <p>25 likely to cease flying imminently, is that something</p>	<p style="text-align: right;">12</p> <p>1 what I would call in real trouble in the sense that</p> <p>2 they were not flying, mostly not flying but, like,</p> <p>3 about to cease flying. They were in a kind of what</p> <p>4 I'll call output free fall that I just didn't see in</p> <p>5 the record for TWA.</p> <p>6 Q So my question to you is, what about</p> <p>7 your economic training gives you expertise in</p> <p>8 evaluating whether an airline is likely to cease</p> <p>9 flying imminently, and what you described for me was</p> <p>10 reading arbitration reports in the context of this</p> <p>11 case; correct?</p> <p>12 A Yes, and evaluating them in the light</p> <p>13 of my training as a economist, understanding how</p> <p>14 markets work and so on. I don't know how to answer</p> <p>15 the question beyond that.</p> <p>16 Q Okay. Is there anything else you can</p> <p>17 point to in your training as an economist that gives</p> <p>18 you expertise in evaluating the likelihood that an</p> <p>19 airline will cease operations imminently?</p> <p>20 A No.</p> <p>21 Q And is the -- the methodology that you</p> <p>22 describe for evaluating whether an airline is likely</p> <p>23 to cease operations which consisted largely of</p> <p>24 reading arbitration reports, is that a generally</p> <p>25 accepted methodology in the field of economics for</p>

3 (Pages 9 to 12)

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<p style="text-align: right;">13</p> <p>1 evaluating whether an airline is likely to cease 2 operations imminently? 3 A I don't know. 4 Q To your knowledge, is it? 5 A No. 6 Q Have you ever seen any peer reviewed 7 research setting forth such a methodology for 8 evaluating whether an airline is likely to cease 9 operations imminently? 10 A No. 11 Q Have you ever been engaged as an 12 expert, prior to this case, to evaluate whether an 13 airline was likely to cease operations imminently? 14 A No. 15 Q What relevance does it have in your 16 analysis whether an airline was likely to cease 17 operations imminently? 18 A It -- it simply helped me determine the 19 set of comparable situations and, as it -- you know, 20 fundamentally cease operation imminently is a -- is 21 a -- is, from where I sit, an unfortunately 22 imprecise categorization. The key -- the key is 23 that if you were to look at -- it was -- the role it 24 played in the analysis was really -- let me just 25 give you the shortest answer. The role it played in</p>	<p style="text-align: right;">15</p> <p>1 essentially cease operation, you know, almost 2 momentarily. 3 It was really very much a -- a -- a concept 4 about, look, are these guys, you know, really, you 5 know, can they make payroll Friday? Here it is 6 Wednesday. Can they make payroll Friday? And -- so 7 that was what I meant by imminent. And that was -- 8 in -- in -- in retrospect, sitting here, it is an 9 unfortunate choice of word, but the concept I had in 10 mind was -- was quite clear. They are not flying 11 and they won't be flying in a few days. You know, 12 again, days is precise. But, you know, very soon. 13 And as -- in reading the record, I -- I 14 said -- I found quite a range of financial 15 conditions in other airlines, and I needed -- what I 16 wanted to do was, you know, using my best judgment 17 as an economist, figure out the ones that appeared 18 to be most comparable to TWA's situation, and a lot 19 of these airlines are in financial difficulty. So 20 it was a question of which ones are, you know, just 21 essentially already gone, even if they are still in 22 the last motions of flying, and which of them are 23 struggling along, which is really what TWA was 24 doing. And then, of course, which ones were 25 actually healthy, which weren't in TWA's category</p>
<p style="text-align: right;">14</p> <p>1 the analysis was to help me determine what the 2 appropriate set of comparable cases were. 3 Q Okay. So you talked about, in your 4 answer, that the -- the notion of whether an airline 5 was likely to cease operations imminently was -- was 6 imprecise; correct? 7 A Yes. 8 Q And -- and you testified that it was an 9 imprecise term; correct? 10 A It -- it doesn't have a quantitative. 11 What I mean by that is, there is no accepted 12 definition quantitatively of what imminently means. 13 Q And -- and did you adopt a quantitative 14 definition in your own mind when you used that term? 15 A No. 16 Q What did you have in mind when you were 17 talking about whether a -- an airline that you were 18 analyzing was likely to cease operations imminently? 19 A What I had in mind was -- what I wanted 20 to do was eliminate from a comparable list airlines 21 that were either not flying anymore or airlines that 22 were essentially in what I would call an output free 23 fall that it was absolutely clear that the routes 24 and equipment they used would no longer be used so 25 that they would stop -- they would -- would</p>	<p style="text-align: right;">16</p> <p>1 either. 2 Q So you only divide -- you only divide 3 the world in terms of comparables into those 4 acquired airlines that are not flying or are 5 expected to cease flying imminently, and those that 6 don't fall into that category; correct? 7 A No. I -- I divide the world into three 8 groups. 9 Q Which other groups do you use? 10 A The -- the -- the third group is the 11 group of airlines that is financially healthy, the 12 acquired airlines that were quite financially 13 healthy. 14 Q So when you talked about imminently 15 being an expectation that the airline would cease 16 flying in a few days, do you mean to say that if you 17 expected an airline to cease operations a month 18 after a transaction, that you would not have 19 included them in the category of airlines that were 20 expected to cease flying imminently? 21 A I don't know the answer to that. I 22 would have to look at the details of the particular 23 case. All of this is based on reading the 24 arbitration reports. And in isolation, a single 25 statement is not going to tell me what I need to</p>

4 (Pages 13 to 16)

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<p style="text-align: right;">17</p> <p>1 know to answer your question.</p> <p>2 Q Well, if I'm trying to understand your</p> <p>3 analysis and whether you appropriately categorized</p> <p>4 airlines into your various buckets, what -- what</p> <p>5 protocol can I use to determine whether you</p> <p>6 appropriately made the analysis of whether an</p> <p>7 airline is expected to cease flying imminently?</p> <p>8 A I don't know that I can specify a</p> <p>9 protocol for you. I have to read the decision, see</p> <p>10 what the arbitrator said. The arbitrators, what</p> <p>11 they tend to do is summarize the overall situation,</p> <p>12 summarize the case made by each side, and then try</p> <p>13 to -- to draw it together. And by reading that, I</p> <p>14 felt I got an accurate picture of what was going on</p> <p>15 in these other situations.</p> <p>16 Q So it is based on your subjective</p> <p>17 judgment based on what you read in an arbitration</p> <p>18 decision; correct?</p> <p>19 A It is based on my expert judgment.</p> <p>20 Q But it is based on a subjective, not an</p> <p>21 objective judgment, relying on what you read in an</p> <p>22 arbitration decision; correct?</p> <p>23 A Yes.</p> <p>24 Q And based on an arbitration decision</p> <p>25 where you made no effort to understand what the</p>	<p style="text-align: right;">19</p> <p>1 or any business to liquidate in bankruptcy?</p> <p>2 A Well, as I understand -- I mean, in</p> <p>3 bankruptcy you can reorganize or liquidate, as I</p> <p>4 understand. And to liquidate would mean they would</p> <p>5 sell their assets.</p> <p>6 Q And do you know what happens to the</p> <p>7 employees of a company that liquidates?</p> <p>8 A They are not -- they are not working.</p> <p>9 Q Is it an accepted methodology within</p> <p>10 the field of economics to rely on arbitration</p> <p>11 decisions to understand whether an airline is about</p> <p>12 to cease flying?</p> <p>13 A I don't know.</p> <p>14 Q To your knowledge, is it?</p> <p>15 A No. It is not a subject of academic</p> <p>16 discourse to discuss whether airlines are going to</p> <p>17 liquidate or not. So it is not really an</p> <p>18 appropriate question to ask whether it is accepted</p> <p>19 to use a technique in this narrow question when the</p> <p>20 question doesn't come up in academic discourse.</p> <p>21 Q Well, are you -- are you familiar with</p> <p>22 any testing of the methodology you used to analyze</p> <p>23 whether an airline was about to cease flying?</p> <p>24 A No.</p> <p>25 Q And do you know whether the technique</p>
<p style="text-align: right;">18</p> <p>1 qualifications of the arbitrator was to assess, the</p> <p>2 likelihood that the airline would stop operating</p> <p>3 imminently; correct?</p> <p>4 A That's correct.</p> <p>5 Q Now, if -- if an airline was in danger</p> <p>6 of liquidation within the near future, would you</p> <p>7 view that as equivalent to an airline that was going</p> <p>8 to cease flying imminently?</p> <p>9 MR. PRESS: I object to the form of the</p> <p>10 question. Particularly, your use of the phrase in</p> <p>11 danger. Subject to that, you can answer.</p> <p>12 THE WITNESS: I don't -- I don't --</p> <p>13 again, I can't answer that without reading the</p> <p>14 details of the case. And when -- when an -- when an</p> <p>15 organization is in financial difficulty, there are</p> <p>16 many paths that can happen. Liquidation's one.</p> <p>17 Continuing operation under the bankruptcy rules is</p> <p>18 another. Finding an angel is a third. You know,</p> <p>19 it's --</p> <p>20 BY MR. TOAL:</p> <p>21 Q Well, if an airline is expected to</p> <p>22 liquidate its assets in bankruptcy, are you familiar</p> <p>23 with the process by which that can happen?</p> <p>24 A I'm familiar, yes.</p> <p>25 Q And what does that mean for an airline</p>	<p style="text-align: right;">20</p> <p>1 that you used in relying on arbitration decisions</p> <p>2 has a known error rate?</p> <p>3 A No.</p> <p>4 Q Let me ask you to take a look at</p> <p>5 paragraph 33 of your report.</p> <p>6 Before I get there, let me ask you, do you</p> <p>7 regard -- do you regard liquidation in bankruptcy as</p> <p>8 the equivalent of ceasing operation?</p> <p>9 A I don't really know the bankruptcy</p> <p>10 rules well enough. I'm not an expert on bankruptcy.</p> <p>11 I'm -- I'm -- I'm interpreting the term liquidation</p> <p>12 as selling off the assets rather than continuing to</p> <p>13 operate.</p> <p>14 Q So would you regard those, at least as</p> <p>15 you are using those terms, as being equivalent?</p> <p>16 A Yes, yes.</p> <p>17 Q Okay. So in paragraph 33, you set</p> <p>18 forth an example involving hypothetical airlines A</p> <p>19 and B that are combining, and you say suppose that</p> <p>20 airline A was in reasonably good financial condition</p> <p>21 but the financial condition of airline B was</p> <p>22 sufficiently poor that it had ceased flying or is</p> <p>23 expected to cease flying imminently absent the</p> <p>24 combination with airline A. Do you see that?</p> <p>25 A Yes.</p>

5 (Pages 17 to 20)

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<p style="text-align: right;">21</p> <p>1 Q Okay. So at least in your example, you</p> <p>2 are taking into consideration the financial</p> <p>3 condition of the acquiring airline, which is airline</p> <p>4 A here; correct?</p> <p>5 A Yes.</p> <p>6 Q But in your actual analysis, you don't</p> <p>7 take into consideration the financial condition of</p> <p>8 the acquiring airline; correct?</p> <p>9 A Well, the acquiring airlines are</p> <p>10 generally in good shape, so all of my examples that</p> <p>11 I give you, airline A -- is in good financial shape</p> <p>12 because they are doing -- because they are doing the</p> <p>13 acquiring.</p> <p>14 Q So you are making an assumption that</p> <p>15 the acquiring airline is in good financial shape?</p> <p>16 A Yes, in reasonable financial shape,</p> <p>17 yes.</p> <p>18 Q You are not making any distinction in</p> <p>19 terms of the acquiring airline as to whether they</p> <p>20 are in reasonably good shape or fantastic shape;</p> <p>21 correct?</p> <p>22 A That's correct.</p> <p>23 Q And in this paragraph, when you say</p> <p>24 that airline B was sufficiently poor, the financial</p> <p>25 condition of airline B was sufficiently poor that it</p>	<p style="text-align: right;">23</p> <p>1 flying imminently?</p> <p>2 A I don't know how to answer that. The</p> <p>3 arbitrator gets his expectations about what's going</p> <p>4 to happen from the record that he sees in front of</p> <p>5 him, which ultimately comes entirely from</p> <p>6 presentations from the parties. So it reflects the</p> <p>7 parties' expectations as well as the conclusion that</p> <p>8 he draws from them.</p> <p>9 Q Well, it may be a -- a matter in</p> <p>10 dispute in an arbitration; correct?</p> <p>11 A Yes.</p> <p>12 Q So one side may be arguing that the</p> <p>13 airline is not expected to cease flying and the</p> <p>14 other side argues that it is expected to cease</p> <p>15 flying; correct?</p> <p>16 A Could be.</p> <p>17 Q And it is the -- the arbitrator who is</p> <p>18 making some determination that gets reflected in the</p> <p>19 arbitration decision; correct?</p> <p>20 A Yes.</p> <p>21 Q And you are not focused on the</p> <p>22 expectations of the parties themselves. You are</p> <p>23 focused on the determination that the arbitrator</p> <p>24 reaches as reflected in his decision; right?</p> <p>25 A What I'm doing is, I'm -- I'm -- I'm</p>
<p style="text-align: right;">22</p> <p>1 had ceased flying or was expected to cease flying,</p> <p>2 whose expectations are you referring to there with</p> <p>3 regard to ceasing flying?</p> <p>4 A I'm not attributing those expectations.</p> <p>5 I'm attributing them to the world. I don't have --</p> <p>6 I wasn't thinking of a particular.</p> <p>7 Q Well, for purposes of your analysis,</p> <p>8 are you focusing on whether an arbitration decision</p> <p>9 reflected that the arbitrator expected --</p> <p>10 A Yes. Yes.</p> <p>11 Q -- the airline to cease flying?</p> <p>12 A Yes.</p> <p>13 Q And are you taking into consideration</p> <p>14 the expectations of anyone other than the</p> <p>15 arbitrator?</p> <p>16 A Well, again, at the of the day, what</p> <p>17 the arbitrator is doing is reflecting what's going</p> <p>18 on in the world, so I would expect that the -- the</p> <p>19 negotiators on both sides also understood what the</p> <p>20 expectations were.</p> <p>21 Q So just to answer my question, are you</p> <p>22 taking into account in -- in the case of an</p> <p>23 arbitrated resolution of seniority integration, the</p> <p>24 expectations of anyone other than the arbitrator</p> <p>25 regarding whether the airline was expected to cease</p>	<p style="text-align: right;">24</p> <p>1 using what the arbitrator states in the decision as</p> <p>2 rationale for his decision as a reflection of a</p> <p>3 reasonable evaluation of the evidence that he has</p> <p>4 presented. So, yes, it is -- it comes to me through</p> <p>5 the arbitrator, but I'm not relying on the</p> <p>6 arbitrator to give me a view of the world.</p> <p>7 Q So in your analysis, the expectation</p> <p>8 that you regard as relevant, at least in an</p> <p>9 arbitration, is the expectation of the arbitrator as</p> <p>10 to whether the acquired airline is expected to cease</p> <p>11 flying; correct?</p> <p>12 A Yes.</p> <p>13 Q Whose expectations are you focused on</p> <p>14 in the case of a negotiated resolution of a</p> <p>15 seniority integration list?</p> <p>16 A Again, I'm looking at the record. If</p> <p>17 I'm reading the record of the case or one of my</p> <p>18 people is reading the record of the case, we are</p> <p>19 looking to do an -- we are trying to evaluate the</p> <p>20 arguments presented by both sides, and they may or</p> <p>21 may not be in dispute of this question. I would</p> <p>22 have to look at the particular case. I couldn't --</p> <p>23 it is hard to answer in the abstract.</p> <p>24 Q So what record are you referring to in</p> <p>25 the context of a negotiated resolution of a</p>

6 (Pages 21 to 24)

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HENRY FARBER

<p style="text-align: right;">25</p> <p>1 seniority integration list?</p> <p>2 A Well, almost all of them that we looked</p> <p>3 at, if you look at our sheet, were arbitrated, I</p> <p>4 think. And, again, the exception might be Delta/Pan</p> <p>5 Am, and in Delta/Pan Am, the -- the document that we</p> <p>6 have is -- that provides the seniority information,</p> <p>7 comes from the addendum to the collective bargaining</p> <p>8 agreement, I think, that was agreed on. Somewhere</p> <p>9 in my report I cite where we got the information</p> <p>10 from -- on the financial condition and so on. And</p> <p>11 we would have to -- I would have to look at that</p> <p>12 source to tell you whose expectation or whose</p> <p>13 analysis -- you call it an expectation, but whose</p> <p>14 analysis we were relying on. As I sit here, in any</p> <p>15 particular case where there is not an arbitration</p> <p>16 record, I can't tell you exactly where I got the</p> <p>17 information.</p> <p>18 Q So in your analysis, how did you try to</p> <p>19 assess in -- in the situation where there is a</p> <p>20 negotiated resolution or a unilateral determination</p> <p>21 of the seniority integration list whether the</p> <p>22 acquired airline was expected to cease flying</p> <p>23 imminently?</p> <p>24 A I don't believe I looked at any</p> <p>25 unilateral -- I don't believe I had any unilateral</p>	<p style="text-align: right;">27</p> <p>1 newspaper articles, look for contemporaneous reports</p> <p>2 of what was going on in the business press and --</p> <p>3 and so on.</p> <p>4 Q But you didn't do that; correct?</p> <p>5 A Personally, no.</p> <p>6 Q And no one on your team did that, did</p> <p>7 they?</p> <p>8 A In the cases where we needed the</p> <p>9 information, we did.</p> <p>10 Q Which cases are those?</p> <p>11 A I -- I don't know which ones they are.</p> <p>12 I'm saying -- I already stated that I looked at</p> <p>13 table one, and if you look at table one -- if you</p> <p>14 can point out to me a case in table one other than</p> <p>15 Delta/Pan Am that's not arbitrated, I -- I -- I -- I</p> <p>16 will go back and find the answer for you. I</p> <p>17 instructed my team to go through the list of our --</p> <p>18 of combinations that we had available to us and to</p> <p>19 attempt to get the information on both -- on</p> <p>20 financial condition and value. But some -- we</p> <p>21 didn't always do that if we couldn't get the</p> <p>22 information on the seniority list, which is the hard</p> <p>23 -- really, the hard information to get, the</p> <p>24 information on what the merged seniority list looked</p> <p>25 like, because that was required to calculate the</p>
<p style="text-align: right;">26</p> <p>1 cases. And, again, I -- I -- I already answered the</p> <p>2 question about Delta/Pan Am. In every case we had a</p> <p>3 source of information and -- I -- I never thought of</p> <p>4 it in terms of whose expectation, but in terms of</p> <p>5 the information we read in the analysis, and I</p> <p>6 suppose we formed our expectation.</p> <p>7 Q So in Delta/Pan Am, the only sources</p> <p>8 I'm aware of that you cited to were two newspaper</p> <p>9 articles; correct?</p> <p>10 A Yes.</p> <p>11 Q Is there any other record you are</p> <p>12 referring to with respect to Delta/Pan Am that</p> <p>13 allowed you to determine the likelihood that the</p> <p>14 acquired was expected to cease flying?</p> <p>15 A Not that I can recall here.</p> <p>16 Q And with respect to negotiated</p> <p>17 resolutions other than Delta/Pan Am, how did you go</p> <p>18 about attempting to assess whether the acquired</p> <p>19 airline was expected to cease flying?</p> <p>20 A I'm not aware of any other negotiated</p> <p>21 transactions that we include -- look at our table</p> <p>22 one. I'm quite -- I could be wrong, but I'm quite</p> <p>23 sure that they are all arbitrated. If they are --</p> <p>24 if they are not, to the extent we need to go</p> <p>25 beyond -- beyond that, we would, again, look for</p>	<p style="text-align: right;">28</p> <p>1 proportional mean difference.</p> <p>2 So what you see at the end of the day and is</p> <p>3 instilled in my analysis in table one, are the cases</p> <p>4 for which we were successfully able to get all the</p> <p>5 information. You are asking me, you know, I'm --</p> <p>6 you are asking me to conjecture about cases I think</p> <p>7 that we may not have pursued the information because</p> <p>8 we couldn't get the other information.</p> <p>9 Q So how do I know from looking at your</p> <p>10 report the reason why any of the 41 cases that you</p> <p>11 looked at, the 41 transactions, how do I know why</p> <p>12 any of those that are not reflected on table one are</p> <p>13 not in there?</p> <p>14 A You don't.</p> <p>15 Q So I don't know, for any of the 41</p> <p>16 cases that are not in table one, whether you</p> <p>17 excluded it because you couldn't get information on</p> <p>18 the seniority list?</p> <p>19 A Correct.</p> <p>20 Q All right. And that's one of the</p> <p>21 reasons that you might have excluded something from</p> <p>22 table one; correct?</p> <p>23 A Absolutely.</p> <p>24 Q I don't know if you couldn't get</p> <p>25 information on what the financial condition of the</p>

7 (Pages 25 to 28)

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HENRY FARBER

<p style="text-align: right;">29</p> <p>1 acquired airline was; correct?</p> <p>2 A Correct.</p> <p>3 Q And I don't know if it is because you</p> <p>4 could get information on the first two categories</p> <p>5 but you couldn't get information on the value of</p> <p>6 assets that the acquired airline was contributing to</p> <p>7 the transaction; correct?</p> <p>8 A Correct.</p> <p>9 Q Do you have in your files any -- well,</p> <p>10 let me ask you, do you know for any transaction that</p> <p>11 was not included on table one, which of those three</p> <p>12 categories of information you were unable to get?</p> <p>13 A No. But if you would like, I -- we can</p> <p>14 go back and get you what we have on that.</p> <p>15 Q Well, did you ever inquire from your</p> <p>16 team which of those areas of information you were</p> <p>17 unable to get for any -- any of the 41 transactions</p> <p>18 that are not listed on table one?</p> <p>19 A I don't think there were 41</p> <p>20 transactions not listed on table one.</p> <p>21 Q I'm sorry. Any of the 41 transactions</p> <p>22 that are not listed. I'm not saying all 41 are not</p> <p>23 listed.</p> <p>24 A Right.</p> <p>25 Q There are 19-some odd transactions</p>	<p style="text-align: right;">31</p> <p>1 the seniority list, which is something that is not</p> <p>2 generally available. And I -- I have a recollection</p> <p>3 that they -- that counsel for TWA pilots would --</p> <p>4 would request that information from counsel for ALPA</p> <p>5 who often has access to a lot of this material.</p> <p>6 Q Do you know if any information on</p> <p>7 seniority lists was provided that you didn't --</p> <p>8 didn't analyze?</p> <p>9 A No. I don't know the answer to that.</p> <p>10 It -- it could -- it could certainly -- it could</p> <p>11 certainly be possible. If we didn't have the other</p> <p>12 information we needed, we -- I mean, we couldn't</p> <p>13 categorize the -- the airline. We didn't have -- I</p> <p>14 don't believe we analyzed it.</p> <p>15 Q So you said your -- your team did</p> <p>16 extensive searching online to try and understand the</p> <p>17 financial information regarding acquired airlines;</p> <p>18 correct?</p> <p>19 A Remember, we are not looking for</p> <p>20 detailed financial information. We are asking for</p> <p>21 enough information to judge whether the airline is</p> <p>22 flying, essentially.</p> <p>23 Q And you said your team did extensive</p> <p>24 online searches --</p> <p>25 A Yeah.</p>
<p style="text-align: right;">30</p> <p>1 listed on table one, and I think you said you -- you</p> <p>2 examined 41 transactions. So for the 41 minus 19 --</p> <p>3 A 22.</p> <p>4 Q -- that were not listed on table one,</p> <p>5 do you know which of those three categories of</p> <p>6 information was missing?</p> <p>7 A No.</p> <p>8 Q Did you know at any time?</p> <p>9 A I did not ask for a report case by case</p> <p>10 on what's missing, so I don't know the answer to</p> <p>11 that.</p> <p>12 Q And with respect to information that</p> <p>13 was missing in any of those categories, did you make</p> <p>14 any effort to understand from your team what steps</p> <p>15 they took to try and acquire the information?</p> <p>16 A Yes.</p> <p>17 Q And what information are you aware of</p> <p>18 regarding the steps they took to acquire the</p> <p>19 information?</p> <p>20 A Well, as I said, they searched news</p> <p>21 sources. They searched -- they did, you know,</p> <p>22 extensive searching of -- of information available</p> <p>23 online, mostly news sources, to get information on</p> <p>24 the two financial categories. The -- I believe we</p> <p>25 asked counsel for information that would help us get</p>	<p style="text-align: right;">32</p> <p>1 Q -- to try and identify that</p> <p>2 information?</p> <p>3 A Yes.</p> <p>4 Q And other than the two articles</p> <p>5 concerning Delta/Pan Am, does the fact that there</p> <p>6 are no other sources listed in your expert report</p> <p>7 suggest that they didn't find anything concerning</p> <p>8 any other transaction?</p> <p>9 A We are not reporting information. I</p> <p>10 mean, we might have found some things about some of</p> <p>11 the 22 transactions that are not in table one, but</p> <p>12 not enough to make it -- to have that transaction</p> <p>13 make it into -- you know, leap the hurdle of being</p> <p>14 included in table one.</p> <p>15 Q Well, what would have been sufficient</p> <p>16 information for you to determine whether, in a</p> <p>17 non-arbitration situation, whether the acquired</p> <p>18 airline was expected to cease flying imminently?</p> <p>19 A Some statement -- some statement,</p> <p>20 statement or statements, in the news about the</p> <p>21 condition of the -- of the airline. They are</p> <p>22 flying. They've got important routes. They are</p> <p>23 continuing to fly. They are in -- you know, they</p> <p>24 are simply in merger negotiations with airline X</p> <p>25 and, you know, so there is no sort of serious doom</p>

8 (Pages 29 to 32)

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<p style="text-align: right;">33</p> <p>1 and gloom, like airline X is -- you know, if you  2 have tickets on airline X next week, you better try  3 to get a refund now because you will not be able to  4 take your flight next week. Again, it is -- I  5 instructed my team to -- what to look for and  6 they -- they looked.  7 <b>Q</b> Who did that work?  8 <b>A</b> I -- we have -- I will show you my lack  9 of facility with names. We have -- over the course  10 of the case there were four people involved. David  11 was -- Ashmore was supervising, and then four Ph.D.  12 economists who we have on staff who do our work.  13 Maria, who is -- Maria K, I call her, she's Kazak.  14 I can't tell you her name. We have Arub Sen,  15 Matthew Pierson, who is no longer with the firm who  16 has moved on, and at the end, I don't know that he  17 was involved in this level of data collection, Tim,  18 and I'm lacking on his last name.  19 <b>Q</b> And which of those individuals did the  20 extensive online searching for financial information  21 regarding acquired airlines?  22 <b>A</b> I -- I believe most of the work was  23 done by Maria and -- and Arub.  24 <b>Q</b> And other than giving them general  25 guidance to -- to conduct these searches, did you</p>	<p style="text-align: right;">35</p> <p>1 <b>A</b> Well, when you do -- when you search  2 online, you get -- searching is astounding these  3 days, and you can come up with all kinds of stuff.  4 I don't know exactly what they found, but they  5 weren't restricted to using just news sources.  6 <b>Q</b> And what other sources did they review?  7 <b>A</b> I don't know.  8 <b>Q</b> Did you direct them to review any other  9 sources?  10 <b>A</b> I directed them to find whatever they  11 could find. I did not restrict their search, but  12 neither did I tell them exactly what to look at.  13 <b>Q</b> Did you direct them to review public  14 filings for the acquired airlines?  15 <b>A</b> No.  16 <b>Q</b> Do you know if they did?  17 <b>A</b> No.  18 <b>Q</b> Did you direct them to review analyst's  19 reports that were being issued on the equity side?  20 <b>A</b> No.  21 <b>Q</b> Do you know if they did that?  22 <b>A</b> No.  23 <b>Q</b> Did you direct them to review analyst's  24 reports on the debt side?  25 <b>A</b> No.</p>
<p style="text-align: right;">34</p> <p>1 give them more specific guidance about what they  2 should be looking for?  3 <b>A</b> Well, I thought the guidance -- the  4 guidance was fairly specific.  5 <b>Q</b> And what guidance did you give them?  6 <b>A</b> I told them, you need to search -- you  7 need to search, you know, public sources like, you  8 know, news reports, particularly in the business  9 press. If you can find any business press specific  10 to the airline industry, look at that. And, you  11 know, told them what we were looking for in terms  12 of, you know, is this airline still flying? Is --  13 is -- is the buzz that they are going to stop flying  14 tomorrow or in a few days, you know, right up at the  15 date. But it was also meant to look beforehand to  16 try to get some idea of -- of what the lay of the  17 land was. But I didn't sit over their shoulder and  18 look at the computer screen and say, oh, no, look at  19 that. I did not do that with specificity.  20 <b>Q</b> And do you know what sources they  21 actually searched?  22 <b>A</b> No.  23 <b>Q</b> Other than contemporaneous news  24 sources, did you direct them to research any other  25 types of documents?</p>	<p style="text-align: right;">36</p> <p>1 <b>Q</b> Do you know if they did that?  2 <b>A</b> No.  3 <b>Q</b> So this situation that you describe in  4 paragraph 33, you say in that case where airline B  5 was either not flying or was expected to cease  6 flying imminently, you say, in this case it may be  7 likely that airline B's pilots would have -- would  8 have had to seek work elsewhere. Do you see that?  9 <b>A</b> Yes.  10 <b>Q</b> And isn't it a certainty if -- if the  11 airline had ceased flying, that its pilots were  12 going to seek work elsewhere?  13 <b>A</b> Well, they could start up again.  14 <b>Q</b> What do you mean by that?  15 <b>A</b> The airline could start flying again,  16 wasn't ceased. So that's why I -- I -- I didn't --  17 I didn't want to make a categorical statement that  18 they would have to definitely seek work elsewhere,  19 but it is quite likely that they would have, but --  20 <b>Q</b> But if the airline ceases flying and  21 doesn't start up, you would agree that those pilots  22 are going to have to find jobs elsewhere?  23 <b>A</b> Absolutely.  24 <b>Q</b> And you say in paragraph 33 that in  25 that situation, those pilots would have to try to</p>

9 (Pages 33 to 36)

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HENRY FARBER

<p style="text-align: right;">37</p> <p>1 get jobs at other airlines and would be at the 2 bottom of their seniority list; correct?</p> <p>3 A No, I didn't. Paragraph 33 doesn't say 4 cease flying and not start up again. It just says 5 ceases flying. Your statement -- the question said 6 ceased flying and not start up again, and that's not 7 what I say in paragraph 33.</p> <p>8 Q Well, you say in paragraph 33, since in 9 any future jobs the former airline B pilots would 10 start at the bottom of their new employer's 11 seniority lists, airline B pilots have minimal 12 career expectations at airline B as of the 13 transaction, and they could expect to be placed 14 lower on the merged seniority list than if airline B 15 were in better financial health; correct?</p> <p>16 A Correct.</p> <p>17 Q So you acknowledge in paragraph 33 18 that, to the extent an airline is either not flying 19 or is expected to cease flying imminently, that 20 their career expectations at airline B are minimal; 21 correct?</p> <p>22 A Yes.</p> <p>23 Q And they could also have minimal career 24 expectations at airline B if airline B was expected 25 to cease operations in two months; correct?</p>	<p style="text-align: right;">39</p> <p>1 account the difference in career expectations 2 between pilots at an airline that was expected to 3 continue flying indefinitely and pilots at an 4 airline that was expected to cease operation in two 5 month's time; correct?</p> <p>6 A Absolutely incorrect.</p> <p>7 Q Why is that incorrect?</p> <p>8 A My analysis takes that into account 9 because in the airline mergers that we analyzed, in 10 the list merger that we analyzed, where the -- 11 that -- expected to fly indefinitely, that's one of 12 the cases where I consider the financial condition 13 of the acquired airline to be good, not weak like 14 TWA. And, therefore, they are not in the list of 15 comparables because they are not comparable because 16 the acquired airline is in better financial 17 condition.</p> <p>18 So that's exactly why my analysis is designed 19 to make that distinction between someone who is 20 working for an airline who -- that's weakened, but 21 is still flying and doesn't expect to shut down now, 22 and in comparison with a group where an airline has 23 shut down or will shut down now, or an airline where 24 there is no expectation that the airline is in 25 trouble. Those are -- that's why there's three</p>
<p style="text-align: right;">38</p> <p>1 A I don't know. A lot can happen in two 2 months. I'm not going -- you know, again, I -- I 3 told you before what I meant by imminently. I mean 4 very, very soon. I don't -- no one really knows 5 what's going to happen in two months.</p> <p>6 Q Well, no -- no one knows with certainty 7 what's going to happen in two days either; correct?</p> <p>8 A That's true. Fair enough.</p> <p>9 Q So my question is, isn't it true that, 10 if an airline is expected to cease operations in two 11 months, that the pilots at that airline would have 12 minimal career expectations at that airline?</p> <p>13 A I don't know. They would have -- 14 because more can happen in two months than can 15 happen in two days, they would have -- likely have a 16 higher -- there is a higher expectation that 17 something will come along that will help their 18 career expectations. They would likely have better 19 career expectations than someone at an airline who 20 is expected to cease operation tomorrow.</p> <p>21 Q And they would have lower expectations 22 than pilots at an airline that was expected to -- to 23 continue flying indefinitely; correct?</p> <p>24 A Absolutely.</p> <p>25 Q And your model doesn't take into</p>	<p style="text-align: right;">40</p> <p>1 categories. You insist on focusing on the bottom 2 category. There is the top category, too. Those 3 guys are not comparable to the TWA group.</p> <p>4 Q So you are -- you are dividing -- you 5 are dividing the world of -- in terms of financial 6 condition of the acquired airline into three 7 categories; correct?</p> <p>8 A Correct.</p> <p>9 Q In the top category, you have acquired 10 airlines that are expected to continue flying absent 11 the transaction indefinitely; correct?</p> <p>12 A I would say so. I didn't do -- I 13 didn't -- yes, I would say so, yeah.</p> <p>14 Q Well, it is your analysis, so you tell 15 me how you define the category in the -- in the top 16 category.</p> <p>17 A Again, remember, it comes from reading, 18 in most cases, reading the arbitration report. And 19 if the airline is healthy, there is no sign that it 20 is -- that it is in financial -- under serious 21 financial stress. You know, so on that basis, I 22 make the expectation that they are going to keep 23 flying, and that their pilots -- and the arbitrators 24 do the same. Their pilots have reasonable career 25 expectations because of this. I didn't put TWA in</p>

10 (Pages 37 to 40)

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HENRY FARBER

<p style="text-align: right;">41</p> <p>1 that category.</p> <p>2 Q And then you have a category at the</p> <p>3 bottom which is defined by airlines that are not</p> <p>4 presently flying or that are expected to cease</p> <p>5 flying imminently, which you meant in a matter of</p> <p>6 days; correct?</p> <p>7 A I think so, yeah. I mean, a day, you</p> <p>8 know, yes. I didn't have a specific, you know,</p> <p>9 absolute time period in mind, but, you know, days, a</p> <p>10 week, couple weeks. Yeah. And a time period where</p> <p>11 it -- it would be hard to think of any -- of a</p> <p>12 scenario where they could keep flying. You are</p> <p>13 absolutely right, anything can happen in two days</p> <p>14 but it is not much time. Anything can happen in two</p> <p>15 months and it is more time. So, you know it's in</p> <p>16 that area, and many of the airlines at the bottom of</p> <p>17 my list are airlines that had ceased flying already.</p> <p>18 Q And between those two categories you</p> <p>19 have a category of acquired airlines that are in</p> <p>20 weakened financial condition which could be anything</p> <p>21 from expected to cease flying within a matter of</p> <p>22 weeks to not healthy but -- but no foreseeable</p> <p>23 expectation that they were going to stop flying;</p> <p>24 correct?</p> <p>25 A I suppose. I mean, I don't -- I don't</p>	<p style="text-align: right;">43</p> <p>1 Q Was that relevant to your analysis?</p> <p>2 A No.</p> <p>3 Q So if I represent to you that the</p> <p>4 bankruptcy that TWA declared at the time of the</p> <p>5 American Airlines transaction was its third</p> <p>6 bankruptcy within about the last ten years, is that</p> <p>7 something you were aware of previously?</p> <p>8 A I knew they had declared bankruptcy</p> <p>9 previously. I'm not aware of the number of times.</p> <p>10 Q And do you know whether any -- any of</p> <p>11 the other acquired airlines on your table one</p> <p>12 involved airlines that had declared bankruptcy three</p> <p>13 times within the span of ten years?</p> <p>14 A No.</p> <p>15 Q So when you say bankruptcy is not a</p> <p>16 clear indicator that an airline will cease flying,</p> <p>17 what would you regard as a clear indicator that an</p> <p>18 airline would cease flying?</p> <p>19 A Show up at the airport and the plane</p> <p>20 didn't take off.</p> <p>21 Q And anything other than that?</p> <p>22 A No. I don't think -- well, what we</p> <p>23 tried to do, again, was, you know, reading in the</p> <p>24 press, and trying to get some idea would they --</p> <p>25 would they likely cease flying very, very soon. I</p>
<p style="text-align: right;">42</p> <p>1 know a matter of some weeks, some unspecified number</p> <p>2 of weeks, airlines that are not healthy and need an</p> <p>3 infusion of cash.</p> <p>4 Q And outside of your analysis of the</p> <p>5 categories that you divided the acquired airlines</p> <p>6 into based on financial condition, are those</p> <p>7 recognized categories of financial strength of an</p> <p>8 airline?</p> <p>9 A I have -- I have no idea.</p> <p>10 Q Have you ever seen categories of</p> <p>11 airlines based on financial strength defined in that</p> <p>12 way anywhere else?</p> <p>13 A No.</p> <p>14 Q And you regard TWA, at the time of the</p> <p>15 American Airlines' transaction, comparable to what</p> <p>16 you describe as airline B in paragraph 33?</p> <p>17 A No.</p> <p>18 Q Now, you say, paragraph 36 of your</p> <p>19 report at the bottom of page 12, it's worth noting</p> <p>20 that bankruptcy, per se, is not a clear indicator</p> <p>21 that an airline will cease flying. Do you see that?</p> <p>22 A Yes.</p> <p>23 Q As of the American transaction, how</p> <p>24 many times had TWA declared bankruptcy?</p> <p>25 A I don't know.</p>	<p style="text-align: right;">44</p> <p>1 can't tell you exactly what the indicator of that</p> <p>2 would be, but I can tell you that bankruptcy is</p> <p>3 clearly not an indicator that an airline is going to</p> <p>4 cease flying. You are going to be hard pressed to</p> <p>5 take a flight on an airline that hasn't declared</p> <p>6 bankruptcy.</p> <p>7 Q I understand you saying bankruptcy is</p> <p>8 not a clear indicator. My question is, what is a</p> <p>9 clear indicator?</p> <p>10 A I don't know. I mean -- and again,</p> <p>11 very hard -- you know, in -- in the short term, as I</p> <p>12 can say, an airline that is sort of hemorrhaging</p> <p>13 output, canceling flights, furloughing lots of</p> <p>14 employees, and, you know, there is a lot of -- there</p> <p>15 is a general view of the people -- knowledgeable</p> <p>16 people, which presumably makes its way into the</p> <p>17 press that the airline is within a very short period</p> <p>18 of ceasing flying. But even then, very hard to say</p> <p>19 that an airline is imminently -- forget the</p> <p>20 imminently -- is going to cease flying. Very hard</p> <p>21 to predict.</p> <p>22 Q Did you investigate whether</p> <p>23 contemporaneous commentators offered the opinion</p> <p>24 that TWA was expected to cease flying at or around</p> <p>25 the time of the American Airlines transaction?</p>

11 (Pages 41 to 44)

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## HENRY FARBER

<p style="text-align: right;">45</p> <p>1 A No.</p> <p>2 Q Would -- would it have made sense to do</p> <p>3 that if you are looking for clear indicators that</p> <p>4 TWA was expected to stop flying?</p> <p>5 A Let me -- let me rephrase. I don't</p> <p>6 think -- when you say did I look for, I don't think</p> <p>7 we found anything that indicated that TWA was -- was</p> <p>8 about to cease flying.</p> <p>9 Q And what did you do to look for that</p> <p>10 information?</p> <p>11 A The same -- the same kind of search</p> <p>12 that we were doing on the other cases. You know --</p> <p>13 Q Which was what with respect to TWA,</p> <p>14 particularly?</p> <p>15 A Well, the same, as I said, it was -- I</p> <p>16 don't have a particular -- I instructed guys to look</p> <p>17 and see what was in the news about this.</p> <p>18 Q Do you know what your team did in an</p> <p>19 effort to find indicators that TWA was expected to</p> <p>20 cease flying imminently?</p> <p>21 A The same as we did generally, which is</p> <p>22 look at -- do a web search, and take a look at what</p> <p>23 was out there.</p> <p>24 Q Can you tell me what sources anyone on</p> <p>25 your team searched to try and find any indicator</p>	<p style="text-align: right;">47</p> <p>1 financial condition have the potential at least to</p> <p>2 provide a clear indication that the airline was</p> <p>3 expected to cease flying imminently?</p> <p>4 A I don't know.</p> <p>5 Q You don't even know if it would have</p> <p>6 the potential to do that?</p> <p>7 A I'm not sure what information about --</p> <p>8 what -- what information are you talking about?</p> <p>9 Q Any financial information of any kind.</p> <p>10 A I suppose there are numbers out there</p> <p>11 that could help with that, sure.</p> <p>12 Q And what sort of numbers might help you</p> <p>13 draw a conclusion that an airline is expected to</p> <p>14 cease flying imminently?</p> <p>15 A It's only -- well, let me -- let me</p> <p>16 change my last answer.</p> <p>17 I don't think financial information by itself</p> <p>18 could help me determine whether an airline is going</p> <p>19 to cease flying imminently.</p> <p>20 Q And why is that?</p> <p>21 A Because, again, an airline can be in</p> <p>22 quite rotten financial condition, have bad cash flow</p> <p>23 problems, and something could come up and change the</p> <p>24 situation. Someone can -- and you can get, for</p> <p>25 example, DIP financing. Things -- things happen.</p>
<p style="text-align: right;">46</p> <p>1 that TWA was expected to stop flying imminently?</p> <p>2 A No.</p> <p>3 Q Can you tell me, can you describe any</p> <p>4 search they ran in any database?</p> <p>5 A No.</p> <p>6 Q Is there a record of that?</p> <p>7 A I don't know the answer to that.</p> <p>8 Q Okay.</p> <p>9 A I don't know that we keep records of</p> <p>10 those searches.</p> <p>11 Q Did you ask counsel to provide any</p> <p>12 information that might indicate TWA was expected to</p> <p>13 cease flying imminently?</p> <p>14 A I don't recall the answer to that</p> <p>15 question. Most of the communication with counsel</p> <p>16 went through David Ashmore.</p> <p>17 Q And to your knowledge, did anyone ask</p> <p>18 anyone working under your direction or you ask</p> <p>19 counsel to provide any information they had</p> <p>20 available that TWA was expected to cease flying</p> <p>21 imminently?</p> <p>22 A I don't -- I don't recall.</p> <p>23 Q You don't recall doing that?</p> <p>24 A No.</p> <p>25 Q Would information about the airline's</p>	<p style="text-align: right;">48</p> <p>1 Things change. So I really -- it's very -- you</p> <p>2 know, what I was relying on was not the financial --</p> <p>3 financial information directly. But, again, it</p> <p>4 didn't appear that TWA was in the kind of free fall.</p> <p>5 Q So you said -- I think the only clear</p> <p>6 indicator that you've identified so far that an</p> <p>7 acquired airline was expected to cease flying</p> <p>8 imminently is statements in contemporaneous news</p> <p>9 reports stating such an expectation; correct?</p> <p>10 A Well, for the most part, again, we are</p> <p>11 relying on the arbitrator's reports.</p> <p>12 Q I'm talking situations where you don't</p> <p>13 have arbitrator's reports.</p> <p>14 A There were no situations like that. In</p> <p>15 other words, virtually everything we used in table</p> <p>16 one is about -- is -- is from arbitration reports.</p> <p>17 Q And I'm not talking about what you used</p> <p>18 in table one. I'm talking about the numerous</p> <p>19 transactions that you didn't use.</p> <p>20 A Most of those failed because of lack of</p> <p>21 data on the seniority list.</p> <p>22 Q How do you know that?</p> <p>23 A Because I -- we had discussions about</p> <p>24 this. Why can't we use more of those? Well, I</p> <p>25 think it is very hard to get enough information on</p>

12 (Pages 45 to 48)

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HENRY FARBER

<p style="text-align: right;">49</p> <p>1 the seniority list to calculate the number.</p> <p>2 Q Well, were there any that failed</p> <p>3 because of lack of information of the financial</p> <p>4 condition of the acquired airline?</p> <p>5 A I don't know the answer to that.</p> <p>6 Q And with respect to TWA, you didn't</p> <p>7 have an arbitration decision; correct?</p> <p>8 A That's correct.</p> <p>9 Q So you had to make a determination</p> <p>10 without the benefit of an arbitration decision about</p> <p>11 whether TWA was expected to cease flying imminently;</p> <p>12 correct?</p> <p>13 A That's correct.</p> <p>14 Q And the only clear indication you've</p> <p>15 given me so far of whether an acquired airline was</p> <p>16 expected to cease flying imminently is whether there</p> <p>17 are contemporaneous news reports saying that we</p> <p>18 expect TWA to cease flying imminently; correct?</p> <p>19 A No.</p> <p>20 Q What else have you pointed to?</p> <p>21 A I told you several times, we talked</p> <p>22 about the output situation, that they had hired</p> <p>23 pilots recently, that the -- the record indicated</p> <p>24 that they were -- they were -- they were</p> <p>25 functioning. They may not have been paying their</p>	<p style="text-align: right;">51</p> <p>1 negotiation concerning seniority integration in a</p> <p>2 situation where there was no right to arbitration,</p> <p>3 would the relevant question be what the expectations</p> <p>4 of the counter-party are with respect to whether the</p> <p>5 acquired airline was expected to cease flying?</p> <p>6 A I don't know what a counter-party is.</p> <p>7 Q The other party to the negotiation.</p> <p>8 A Can you repeat the question?</p> <p>9 Q Yeah. So in the context of a</p> <p>10 negotiation concerning seniority integration, would</p> <p>11 the relevant question be what the expectations are</p> <p>12 of the counter-party regarding whether the acquired</p> <p>13 airline was expected to cease flying?</p> <p>14 MR. PRESS: I truly don't understand</p> <p>15 the question. I object to the form of it.</p> <p>16 THE WITNESS: I -- you used the</p> <p>17 word definite -- definite. Are you using</p> <p>18 definite on -- we talked about the definite --</p> <p>19 definite articles yesterday. In your question you</p> <p>20 used a definite article. The primary consideration,</p> <p>21 is that what you said?</p> <p>22 MR. TOAL: Can you read back the</p> <p>23 question?</p> <p>24 (The court reporter read back the</p> <p>25 pending question as follows:</p>
<p style="text-align: right;">50</p> <p>1 bills but they were -- they were, you know, as</p> <p>2 many -- as on time as many -- as some of us might</p> <p>3 like. They were not in what I'll call -- I call</p> <p>4 output free fall.</p> <p>5 Q So I think you are pointing to things</p> <p>6 that you think are indicators that an airline was</p> <p>7 expected to continue flying.</p> <p>8 A Yes.</p> <p>9 Q I'm asking, what are the indicators</p> <p>10 that an airline was expected to cease flying?</p> <p>11 A I didn't see those in the TWA case.</p> <p>12 Q What would they be?</p> <p>13 A Well, I -- I -- I -- I answered this</p> <p>14 earlier. I said that if, indeed, you know, they</p> <p>15 basically used to fly to 20 cities and they are</p> <p>16 flying to one, and they're cutting their flights</p> <p>17 there. It is like they are just, I don't know,</p> <p>18 fading away. And one day, they cease.</p> <p>19 Q Anything other than that that you can</p> <p>20 think of that would be a clear indicator that an</p> <p>21 acquired airline was expected to cease flying</p> <p>22 imminently?</p> <p>23 A You asked me -- not as I sit here right</p> <p>24 now.</p> <p>25 Q Now, in the context of a negotiated --</p>	<p style="text-align: right;">52</p> <p>1 "Question: Yeah. So in the context of</p> <p>2 a negotiation concerning seniority</p> <p>3 integration, would the relevant question be</p> <p>4 what the expectations are of the</p> <p>5 counter-party regarding whether the acquired</p> <p>6 airline was expected to cease flying?")</p> <p>7 THE WITNESS: I don't think that's the</p> <p>8 relevant answer.</p> <p>9 BY MR. TOAL:</p> <p>10 Q You think it's a relevant question?</p> <p>11 A It could be something that the</p> <p>12 counter-party would consider, sure.</p> <p>13 Q And is that something that you would</p> <p>14 expect to have a bearing on whether any agreement</p> <p>15 regarding seniority integration was reached?</p> <p>16 A I don't know if it would have a bearing</p> <p>17 on whether an agreement on seniority integration</p> <p>18 would be reached.</p> <p>19 Q Do you know in this case what the APA's</p> <p>20 views were about whether TWA was expected to cease</p> <p>21 flying imminently?</p> <p>22 A No.</p> <p>23 Q Did you make any effort to discover</p> <p>24 what the APA's views were with regard to whether it</p> <p>25 expected TWA to cease flying imminently?</p>

13 (Pages 49 to 52)

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HENRY FARBER

<p style="text-align: right;">53</p> <p>1 A I read some documents where the APA 2 tried to explain to the TWA pilots just how crappy 3 the condition of TWA was. 4 Q And did that give you insight into the 5 APA's views about whether they expected TWA to cease 6 flying imminently? 7 A Those are just self-serving comments in 8 negotiation. I don't accept either their statements 9 or the statements the TWA pilots made at face value 10 because they are in negotiation. They are trying to 11 make arguments for their side. So for the APA 12 pilots to say, you know, you guys are really in the 13 shitter, of course they want to make that case and 14 scare the TWA guys into accepting an agreement 15 that's not as good. And it is the job of ALPA to 16 translate that, you know, to put that in context. 17 Q So do you assume those statements that 18 you read and described concerning the APA's views 19 about TWA's financial condition not to be 20 representative of the APA's actual views? 21 A I have no way of knowing. 22 Q So you can't say one way or the other 23 as you sit here whether that is an accurate 24 reflection of the APA's views or not; correct? 25 A Correct.</p>	<p style="text-align: right;">55</p> <p>1 needed some outside help. 2 Q And are you -- are you making any 3 assumptions about whether they would be able to 4 continue flying in the absence -- withdrawn. 5 Are you making any assumptions about how long 6 they would be able to continue flying for? 7 A Yes. Longer than -- longer than 8 imminent. Longer than, you know, a few days or a 9 few -- I don't have a particular number in mind, but 10 the term -- I'm not suggesting necessarily that the 11 airline would fly indefinitely, but it could fly for 12 quite a while. It is a -- category D, this is -- 13 this is the sort of the middle category in my three 14 categorizations, and it's -- it's reasonably broad. 15 Q It is very broad; isn't it? 16 A No. I mean, you know, if you look at 17 the transactions that we analyzed, there were many 18 that fall into category three -- category three. We 19 will call category one the lowest category. 20 Category two, the TWA category. And category three, 21 the two healthy airlines category. It is a category 22 that, yeah, it is reasonably broad in the sense that 23 it turns out that many troubled airlines continue to 24 fly, and they continue to fly through various kinds 25 of arrangements, through mergers, through</p>
<p style="text-align: right;">54</p> <p>1 Q And you didn't read the sworn testimony 2 from the APA representatives that was taken in this 3 case; correct? 4 A Correct. 5 Q So you describe in paragraph 34 of your 6 report a different example involving airlines C and 7 D. And you say that airline C was in reasonably 8 good financial condition, and airline D was in worse 9 financial condition than airline C but was still 10 flying and was expected to continue flying absent 11 the transaction. Do you see that? 12 A Yes. 13 Q Now, is that contrary to what you 14 testified to earlier today about what the second 15 category was in terms of the financial strength of 16 the acquired airline and whether they are expected 17 to continue flying indefinitely? 18 A No. 19 Q Well, you say here that it was expected 20 to continue to fly absent the transaction. What did 21 you mean by that? 22 A I meant they continued to fly and not 23 shut down imminently. Perhaps, again -- I say right 24 here, perhaps through an alternative combination or 25 other type of restructuring. So those -- they</p>	<p style="text-align: right;">56</p> <p>1 acquisitions, through restructuring, through 2 bankruptcy, lots of things. And, yes, TWA is in 3 that category, and there are many -- many kinds of 4 ways that those kinds of airlines can continue 5 flying. 6 Q But when you say that airline D was 7 expected to continue to fly absent the transaction, 8 all you mean by that is -- is that it was expected 9 to continue to fly for at least a few more days, or 10 another week -- 11 A No. 12 Q -- something on that order; correct? 13 A I mean -- I mean -- no, I mean more 14 than that. 15 Q How much more? 16 A A few more days is imminent. Shut 17 down. That's -- that's airline B, not airline D. 18 Q So my question was, when you talk about 19 airline D and you say it was expected to continue to 20 fly, what you mean by that is that it was expected 21 to continue to fly more than a few days, or more 22 than a week, or something on that order of 23 magnitude; correct? 24 A Yes. 25 Q Okay. And do you have an understanding</p>

14 (Pages 53 to 56)

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HENRY FARBER

<p style="text-align: right;">57</p> <p>1 of the issues that were confronting TWA as an 2 airline prior to the American Airlines transaction? 3 A I -- I don't have a detailed 4 understanding, no. 5 Q And what is the understanding that you 6 have of the problems confronting TWA at the time of 7 the transaction? 8 A My main understanding is that they were 9 having cash flow issues. They had substantial lease 10 payments that needed to be made, among other 11 obligations. 12 Q And beyond that, do you have any other 13 understanding? 14 A No. 15 Q Would it be relevant to your analysis 16 of whether TWA was expected to continue to fly 17 imminently to get a detailed understanding of the 18 problems that TWA was confronting? 19 A No. 20 Q Why not? 21 A Because, as I said, I was using, in 22 this particular case as a single, that they were an 23 airline that had substantial -- had substantial 24 operations. They were not in free fall in terms of 25 output. And I -- on that basis I expected them to</p>	<p style="text-align: right;">59</p> <p>1 Q You didn't consider TWA's leverage to 2 be relevant to whether TWA was expected to cease 3 flying imminently? 4 A I expected them to be able to work out 5 alternatives despite their liquidity situation. 6 Q And did you analyze TWA's leverage? 7 A No. 8 Q And you didn't analyze it because you 9 didn't consider it relevant to your analysis; 10 correct? 11 A Correct. I was able to make the 12 distinction I needed to make without doing that. 13 Q You believed that you were? 14 A Yes. 15 Q Did you analyze TWA's hub structure to 16 try and understand whether TWA was expected to cease 17 flying imminently? 18 A No. 19 Q Did you analyze sources of competition 20 for TWA and analyze whether it was expected to cease 21 flying imminently? 22 A No. 23 Q Did you analyze TWA's exposure to 24 changes in fuel prices to try and understand whether 25 TWA was expected to cease flying imminently?</p>
<p style="text-align: right;">58</p> <p>1 continue flying, and I didn't need to get a detailed 2 -- I'm not trying to predict what their 3 profitability would be, exactly how long -- would 4 they still be here five years, 10 years, 20 years 5 from now. I simply wanted to see, did they look 6 like the airlines that they -- that were not flying 7 essentially or almost not flying, or did they look 8 like the airlines that were in a position to keep 9 flying. And they looked like an airline that was in 10 a position to keep flying based on the fact that 11 they had substantial, you know, route and equipment 12 assets. They were continuing to -- they were not in 13 free fall in terms -- you know, I've already 14 described what I mean by free fall. 15 Q So did you decide that if you 16 determined that TWA was not in an output free fall 17 that you didn't need to consider any other factors 18 to assess whether TWA was likely to cease flying 19 imminently? 20 A Absent any -- absent finding news 21 reports and so on, that, yeah, basically, yes. 22 Q And you didn't consider TWA's liquidity 23 situation relevant to whether it was expected to 24 cease flying imminently? 25 A That's correct.</p>	<p style="text-align: right;">60</p> <p>1 A No. 2 Q Did you analyze whether TWA was in 3 danger of having its planes repossessed by lessors 4 in analyzing whether TWA was expected to cease 5 flying imminently? 6 A No. 7 Q Do you know what the caribou ticket 8 deal is? 9 A Can you refresh my memory? 10 Q Do you recall that there is a ticket 11 deal that Carl Ichan had with TWA? 12 A Oh, yes. 13 Q And what do you know about that ticket 14 deal? 15 A I -- I seem to recall that somehow it 16 gave Ichan access at -- at very low cost to TWA -- 17 some TWA seats. Is that right? I -- I remember 18 reading about this somewhere. 19 Q And did you analyze whether the caribou 20 ticket deal had any relevance for whether TWA was 21 expected to cease flying imminently? 22 A No. 23 Q Did you analyze the amount of 24 connecting traffic that TWA had in assessing whether 25 it was expected to cease flying imminently?</p>

15 (Pages 57 to 60)

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HENRY FARBER

<p style="text-align: right;">61</p> <p>1 A No.</p> <p>2 Q And other than your determination that</p> <p>3 there was not an output free fall at TWA, was there</p> <p>4 anything else you can point to to support your view</p> <p>5 that TWA was not expected to cease flying</p> <p>6 imminently?</p> <p>7 A Well, again, they were -- they had</p> <p>8 recently done a bit of hiring. I don't know how</p> <p>9 much. There is nothing specific I want to point to.</p> <p>10 Q So other than what you testified to?</p> <p>11 A Right, correct.</p> <p>12 <b>MR. TOAL: Off the record.</b></p> <p>13 <b>VIDEO SPECIALIST: The time is now</b></p> <p>14 <b>10:44 and we are going off the video record.</b></p> <p>15 <b>(Brief recess.)</b></p> <p>16 <b>VIDEO SPECIALIST: The time is now</b></p> <p>17 <b>11:00 and we are back on the video record.</b></p> <p>18 <b>BY MR. TOAL:</b></p> <p>19 Q Professor Farber, before the break we</p> <p>20 talked about your three categories for acquired</p> <p>21 airlines. Do you remember that testimony?</p> <p>22 A Yes.</p> <p>23 Q Okay. Could you take a look at your</p> <p>24 table one?</p> <p>25 So in your report you identified seven</p>	<p style="text-align: right;">63</p> <p>1 example you used of airlines C and D?</p> <p>2 A Yes.</p> <p>3 Q And so those airlines you view as the</p> <p>4 acquired airlines as comparable to the condition of</p> <p>5 airline D as described in your example; correct?</p> <p>6 A Yes. At least falling into that</p> <p>7 general category, yes.</p> <p>8 Q Okay. So you offered in your expert</p> <p>9 report another example of two airlines A and B, in</p> <p>10 which airline B was expected -- either was not</p> <p>11 flying or is expected to cease flying imminently;</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q And which of these transactions on</p> <p>15 table one fall into that group of comparables?</p> <p>16 A You know, it's interesting. I -- I</p> <p>17 can't tell you with a hundred percent accuracy. In</p> <p>18 fact, in the -- I've -- I've -- I've asked to get --</p> <p>19 to extend this so that I -- I can know that.</p> <p>20 Offhand, I can tell you that at the bottom of the</p> <p>21 list, three airlines that were not flying. I</p> <p>22 believe Frontier was not flying in the</p> <p>23 Continental/Frontier. This is, I think, what we</p> <p>24 call the first Frontier. There are two Frontier</p> <p>25 Airlines during the period. So Continental/Frontier</p>
<p style="text-align: right;">62</p> <p>1 transactions that you considered comparables for the</p> <p>2 American Airlines/TWA transaction; correct?</p> <p>3 A Right.</p> <p>4 Q And I have those as the Flying</p> <p>5 Tigers/Seaboard transaction?</p> <p>6 A Okay.</p> <p>7 Q The FedEx/Flying Tigers --</p> <p>8 A I'm sorry. Can I make checkmarks on</p> <p>9 here? This is the exhibit.</p> <p>10 Q Yeah, you can.</p> <p>11 The FedEx/Flying Tiger transaction, the</p> <p>12 Delta/Pan Am transaction, the Delta/Western</p> <p>13 transaction, the Air Canada/Canadian transaction.</p> <p>14 A The -- the second one. Not the first</p> <p>15 one. There are two of them. They are the same</p> <p>16 transaction, but different arbitration reports.</p> <p>17 Q Understood.</p> <p>18 A I meant -- I think we meant the second,</p> <p>19 which is more conservative.</p> <p>20 Q The Texas International/Continental</p> <p>21 transaction, and the Alaska/Jet America transaction?</p> <p>22 A Yes.</p> <p>23 Q So those comparables with the acquired</p> <p>24 airline in each of those transactions fall into the</p> <p>25 second category you've created, which is the -- the</p>	<p style="text-align: right;">64</p> <p>1 was not flying. Midwest, I think, was not flying</p> <p>2 when it was -- did the deal with Republic. And</p> <p>3 Links was not flying when it did the deal with</p> <p>4 Republic. So that those are clearly in category B.</p> <p>5 Q A/B?</p> <p>6 A They are B -- they are B airlines.</p> <p>7 Those are A/B mergers.</p> <p>8 Which of the rest have that -- are in that</p> <p>9 category, I can't be sure.</p> <p>10 Q And then you -- you have a third</p> <p>11 category in your report which you illustrate giving</p> <p>12 an example of airlines E and F --</p> <p>13 A Right.</p> <p>14 Q -- where -- I will paraphrase, but I</p> <p>15 think you say both airlines are financially healthy.</p> <p>16 Which of these transactions falls within that</p> <p>17 category?</p> <p>18 A I can get you that information. I</p> <p>19 don't have that -- I don't have that in the report.</p> <p>20 Q Okay. Will you get -- will you get</p> <p>21 that information?</p> <p>22 A Absolutely. In fact, I've already</p> <p>23 asked for it.</p> <p>24 Q And -- and will you provide it to us?</p> <p>25 A Yes.</p>

16 (Pages 61 to 64)

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<p style="text-align: right;">65</p> <p>1 Q As you sit here today, can you give me 2 your -- your best effort to identify transactions 3 that fall within that category? 4 A No. I mean, I -- I -- my best effort 5 is, I can't -- I really don't know enough to tell 6 you that. 7 Q What category does the Alaska/Great 8 Northern transaction fall into? 9 A I just answered, I don't know. 10 Q So beyond what you've told me, can you 11 tell me anything else about which categories these 12 transactions should fall into? 13 A No. I mean, well, I can say the first 14 Air Canada/Canadian, which is not checked off 15 because it is listed twice, is in the comparison 16 group, but in the comparison group using the minus 17 .153 rather than the minus 0 -- minus 0.028. That's 18 all. But, beyond that, I -- I don't want to 19 misrepresent anything, so I think it would be best 20 if I waited until I could get you that information. 21 Q Okay. When do you expect to get that 22 information? Today? 23 A I hope so. But I can't be sure. 24 (Farber-12 Congressional hearing 25 transcript marked for identification.)</p>	<p style="text-align: right;">67</p> <p>1 <b>BY MR. TOAL:</b> 2 Q So if -- if I can direct your attention 3 to page seven, the bottom of the carryover paragraph 4 there referring to TWA. He says, this is an airline 5 that is going to go under and go out of business 6 unless the bankruptcy court can approve the sale, 7 referring to the sale to American Airlines. 8 A I'm sorry, where do -- I don't see 9 where you are reading. 10 Q Page seven? 11 A At the very bottom? 12 Q The bottom of the first carryover 13 paragraph -- 14 A Oh, I see. 15 Q -- at the top of the page. 16 So it says, this is an airline that is going 17 to go under and go out of business unless the 18 bankruptcy court can approve that sale. Do you see 19 that testimony? 20 A Yes. 21 Q And did you consider that testimony in 22 forming your opinions? 23 A Obviously not, since I hadn't read it. 24 Q And is that something that would have 25 affected your analysis had you been aware of it</p>
<p style="text-align: right;">66</p> <p>1 <b>BY MR. TOAL:</b> 2 Q Let me show you a document I have 3 marked as Farber Exhibit-12. And I think you've 4 testified previously that you hadn't read any of the 5 congressional testimony concerning this transaction; 6 is that correct? 7 A That's correct. 8 Q Okay. So you see this is dated 9 February 1, 2001? 10 A Yes. 11 Q And this is a hearing concerning the 12 effects of the American Airlines/TWA transaction and 13 other airline industry consolidation on competition 14 and the consumer. Do you see that? 15 A Yes. 16 Q Let me direct your attention to page 17 seven of this transcript of this hearing. This is 18 the testimony of Senator Bond. Do you know who he 19 is? 20 A I know the name. Only through the 21 so-called Bond amendment. 22 Q Okay. So it indicates on page five -- 23 <b>MR. PRESS: Distinguished senator from</b> 24 <b>Missouri.</b> 25 <b>THE WITNESS: Yes, I see that.</b></p>	<p style="text-align: right;">68</p> <p>1 before you prepared the report? 2 A I'm not even sure -- I'm not even sure. 3 Who's -- who's speaking? 4 Q This is Senator Bond. 5 <b>MR. PRESS: Where -- where are you</b> 6 <b>reading? That's not Senator Bond.</b> 7 <b>BY MR. TOAL:</b> 8 Q It is the statement of the Honorable 9 Christopher S. Bond, US Senator from Missouri. 10 So knowing that this is a statement from 11 Senator Bond, if you had been aware of this 12 statement at the time you prepared your report, 13 would it have affected your analysis? 14 A No. 15 Q Okay. Below that he says, right now 16 TWA is a debtor in possession, and had it not been 17 for an infusion of cash, referring to the debtor in 18 possession financing provided by American Airlines, 19 they would have been out of business. Do you see 20 that? 21 A Yes. 22 Q And had you been aware of this 23 testimony at the time you prepared your report, 24 would it have affected your analysis? 25 A No.</p>

17 (Pages 65 to 68)

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<p style="text-align: right;">69</p> <p>1 Q Why not? This is a contemporaneous 2 statement indicating about this transaction TWA is 3 expected to go out of business. 4 A I will -- I mean, this is a senator 5 making a political point in a hearing. It is not an 6 expert. It is not -- you know, I wouldn't believe 7 the negotiators in a negotiation. I'm not sure I'll 8 believe a US senator trying to get some -- some -- 9 I'm not even sure what he is looking for here. But 10 I'm not even sure why the hearing's happening. So I 11 just don't know what the agenda is, and I -- I tend 12 not to take statements like this -- political 13 statements like this at face value. 14 Q And you are saying this is a political 15 statement because it is made by a senator? 16 A I don't know anything about -- this is 17 -- you put this in front of me. It is -- it's a 18 hearing in Congress, in the US Senate. I don't 19 really know why they were having a hearing. I don't 20 know what the agenda is. I don't know what policy 21 they want passed. So I have no way of putting this 22 in any context that I can make sense of. 23 Q Okay. So nothing -- nothing said in 24 this hearing by Senator Bond would have had -- 25 concerning TWA's financial condition and the</p>	<p style="text-align: right;">71</p> <p>1 Q So it's the first full sentence on the 2 page. 3 A Again, let me -- let me say this. I 4 now -- I think I saw on page 14, I think I 5 understand what the agenda is. It is basically TWA 6 and American have agreed to merge, and the justice 7 department, as is the case, has to decide whether to 8 challenge the merger under the antitrust laws. And 9 these are hearings where advocates for certain -- 10 you know, political advocates for certain 11 constituencies are -- are urging the justice 12 department to approve the merger. And what they are 13 doing is putting in the record their view of what 14 would have happened in order to pressure the justice 15 department into approving the merger. I don't think 16 that is -- that's not evidence that I'm going to 17 consider here. 18 Q Okay. So I -- I understand your 19 position, that you don't -- you don't credit these 20 statements because you think they are made in a 21 political context; is that correct? 22 A Yeah. 23 Q Okay. And my question to you is, if it 24 was the case that TWA would have shut down on or 25 around January 10th absent the American transaction,</p>
<p style="text-align: right;">70</p> <p>1 likelihood it would go out of business absent this 2 transaction, would have any effect on your analysis; 3 is that correct? 4 A Correct. 5 Q All right. Turn to page 15 of this 6 transcript. So if you flip back to page 14, you 7 will see this is a statement of the Honorable 8 Gregory W. Meeks, US representative from New York. 9 Do you see that? 10 A Yeah. 11 Q Okay. So at the top of page 15, do you 12 see the language that says, let me be very clear, 13 without American's intervention, TWA would have shut 14 down around January 10th. Do you see that? 15 A Yes. 16 Q Now, would -- if TWA had shut down on 17 or around January 10th, would that be close enough 18 in time to the -- to the date of the transaction to 19 be -- to be classified as T -- TWA ceasing operation 20 imminently? 21 A I don't see January 10th in here. 22 Q It's at the top of page 15. Are you 23 looking at page 15? 24 A No. I'm looking at page 14. I'm 25 sorry.</p>	<p style="text-align: right;">72</p> <p>1 in your view, would shutting down on January 10th 2 qualify as TWA ceasing to fly imminently? 3 A If they would have -- what -- I'm 4 trying to decide -- I -- I don't think I know what 5 date I'm standing at and where January 10th is 6 relative to where I am. Are you talking 7 January 9th? Am I standing on January 9th and 8 asking whether a shutdown on January 10th is 9 imminent? Yes. 10 Q You tell me. It is your analysis. 11 MR. PRESS: No, no. You asked him to 12 comment on an incorrect -- 13 MR. TOAL: Is this an objection? 14 MR. PRESS: Yes, it is. 15 MR. TOAL: Okay. So I take your 16 objection. 17 MR. PRESS: I object to the form and 18 I'm urging you, just move on, Dan. You -- you beat 19 every horse to death for the last day and a half. 20 MR. TOAL: Is that an objection to 21 form? 22 MR. PRESS: I'm sorry for that 23 outburst, but -- 24 THE WITNESS: Well, if I'm standing on 25 January 1st, 2009 -- I'm sorry, not 2009 -- 1999,</p>

18 (Pages 69 to 72)

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<p style="text-align: right;">73</p> <p>1 two years before, it is not imminent.</p> <p>2 <b>BY MR. TOAL:</b></p> <p>3 <b>Q</b> So when are you -- as of what point are</p> <p>4 you assessing whether TWA was expected to cease</p> <p>5 flying imminently?</p> <p>6 <b>A</b> This would be at the date when they</p> <p>7 were in negotiations with -- with the APA and ALPA</p> <p>8 would be in negotiation.</p> <p>9 <b>Q</b> But what you are looking at is whether</p> <p>10 TWA was expected to cease flying absent the</p> <p>11 transaction; correct?</p> <p>12 <b>A</b> Yes.</p> <p>13 <b>Q</b> So at the time that TWA and -- the TWA</p> <p>14 MEC and the APA are negotiating, the transaction has</p> <p>15 already been announced; correct?</p> <p>16 <b>A</b> Yes.</p> <p>17 <b>Q</b> And did you understand that TWA was</p> <p>18 receiving an infusion of DIP financing from American</p> <p>19 Airlines?</p> <p>20 <b>A</b> Yes.</p> <p>21 <b>Q</b> Do you know what the magnitude of that</p> <p>22 DIP financing was?</p> <p>23 <b>A</b> I don't recall the number offhand.</p> <p>24 <b>Q</b> Do you know whether TWA would have been</p> <p>25 able to continue to be in operations without that</p>	<p style="text-align: right;">75</p> <p>1 District of Delaware marked for</p> <p>2 identification.)</p> <p>3 <b>BY MR. TOAL:</b></p> <p>4 <b>Q</b> I show you a document that I'm going to</p> <p>5 mark as Farber Exhibit-13.</p> <p>6 I mark as Farber Exhibit-13, an April 2nd,</p> <p>7 2001 decision from the United States Bankruptcy</p> <p>8 Court, District of Delaware.</p> <p>9 I believe you testified previously that you</p> <p>10 hadn't -- you haven't reviewed this document; is</p> <p>11 that correct?</p> <p>12 <b>A</b> That's correct.</p> <p>13 <b>Q</b> Let me direct your attention to page</p> <p>14 five, paragraph five of this decision.</p> <p>15 Do you see that paragraph five says, in their</p> <p>16 effort to find a strategic partner, TWA and</p> <p>17 Rothschild approached more than seven airlines</p> <p>18 including Delta, Continental, United and USAir. As</p> <p>19 of January 2nd, 2001, none of these airlines was</p> <p>20 prepared to acquire the broad base of TWA's assets</p> <p>21 or to preserve the company as a going concern. Do</p> <p>22 you see that?</p> <p>23 <b>A</b> Yes.</p> <p>24 <b>Q</b> Is that something you were aware of</p> <p>25 when preparing your analysis?</p>
<p style="text-align: right;">74</p> <p>1 DIP financing?</p> <p>2 <b>A</b> I don't know.</p> <p>3 <b>Q</b> Did you take any steps to assess that?</p> <p>4 <b>A</b> No.</p> <p>5 <b>Q</b> So if the transaction between TWA and</p> <p>6 American Airlines was announced on approximately</p> <p>7 January 3rd --</p> <p>8 <b>MR. PRESS: I mean, if you are going to</b></p> <p>9 <b>ask him hypotheticals, at least ask him accurate</b></p> <p>10 <b>hypotheticals. Dan, you've done this over and over</b></p> <p>11 <b>again, and it's improper.</b></p> <p>12 <b>MR. TOAL: Okay. So when -- when do</b></p> <p>13 <b>you think the transaction was announced?</b></p> <p>14 <b>MR. PRESS: It was announced on</b></p> <p>15 <b>January 9th.</b></p> <p>16 <b>MR. TOAL: Okay. Even better.</b></p> <p>17 <b>BY MR. TOAL:</b></p> <p>18 <b>Q</b> So if the transaction was announced on</p> <p>19 January 9th, all right, if it would have been the</p> <p>20 case that TWA would've shut down on or around</p> <p>21 January 10th, would that qualify as ceasing</p> <p>22 operations imminently?</p> <p>23 <b>A</b> Yes.</p> <p>24 (Farber-13 April 2nd, 2001 decision</p> <p>25 from the United States Bankruptcy Court,</p>	<p style="text-align: right;">76</p> <p>1 <b>A</b> No.</p> <p>2 <b>Q</b> Had you been aware of that, would that</p> <p>3 have affected your results?</p> <p>4 <b>A</b> No.</p> <p>5 <b>Q</b> Okay. Take a look at paragraph 17.</p> <p>6 So you see paragraph 17 says that neither</p> <p>7 American nor TWA contrived an emergency. Before</p> <p>8 negotiating the asset purchase agreement, TWA ended</p> <p>9 the year 2000 with 100 million in cash, which TWA's</p> <p>10 testimony established was 50 to 100 million less</p> <p>11 than TWA needed to survive its winter season. TWA's</p> <p>12 approximate cash balance on January 10, 2001, was 20</p> <p>13 to 30 million, and TWA needed 40 million to fund its</p> <p>14 operations the next day. As its Chapter 11 case</p> <p>15 progressed, TWA had and continues to have a cash</p> <p>16 burn rate of \$3 million per day.</p> <p>17 Had you been aware of that testimony -- had</p> <p>18 you been aware of that finding prior to preparation</p> <p>19 of your report, would that have affected your</p> <p>20 analysis?</p> <p>21 <b>A</b> I don't understand the paragraph. It</p> <p>22 says that they had 20 to 30 million. They needed</p> <p>23 40 million for the next day, and then it says they</p> <p>24 burn cash at 3 million a day. How do you -- I don't</p> <p>25 see how that squares up.</p>

19 (Pages 73 to 76)

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<p style="text-align: right;">77</p> <p>1 Q So I take it that the 3 million is an</p> <p>2 average burn rate, but they have particular</p> <p>3 obligations on particular days.</p> <p>4 A I don't know.</p> <p>5 Q Okay. In any event, is this</p> <p>6 information you were aware of when you were</p> <p>7 preparing your report?</p> <p>8 A No.</p> <p>9 Q Had you been aware of this information,</p> <p>10 would it have affected your analysis?</p> <p>11 A No.</p> <p>12 Q Would it have affected your view of</p> <p>13 whether TWA was expected to cease flying imminently?</p> <p>14 A I don't know. I would have to study</p> <p>15 that.</p> <p>16 Q Okay. Is it possible that it would</p> <p>17 have affected your analysis of whether TWA was</p> <p>18 expected to cease flying imminently?</p> <p>19 A I would have to look and see if there</p> <p>20 is other sources that they have got for funds.</p> <p>21 It's -- it's not -- again, it is not the kind of</p> <p>22 information I was considering.</p> <p>23 Q Well, you were -- you were considering</p> <p>24 whether TWA was expected to cease flying imminently;</p> <p>25 correct?</p>	<p style="text-align: right;">79</p> <p>1 1110 lessors. Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Do you know what section 1110 lessors</p> <p>4 are?</p> <p>5 A No.</p> <p>6 Q Were you aware that TWA faced the</p> <p>7 prospect of having its fleet grounded in March --</p> <p>8 March 12th, 2001?</p> <p>9 A No.</p> <p>10 Q Is that something that might have</p> <p>11 affected your analysis of whether TWA was expected</p> <p>12 to cease operations imminently?</p> <p>13 MR. PRESS: Again, I object to the</p> <p>14 forms of these questions. You are mischaracterizing</p> <p>15 this order completely.</p> <p>16 THE WITNESS: No.</p> <p>17 MR. TOAL: You will have an opportunity</p> <p>18 to redirect if you think I've said anything --</p> <p>19 MR. PRESS: No. It is your obligation</p> <p>20 to ask fair questions of witnesses and you are not.</p> <p>21 MR. TOAL: I disagree.</p> <p>22 BY MR. TOAL:</p> <p>23 Q Take a look at paragraph 20. Do you</p> <p>24 see paragraph 20 says, TWA had no other strategic</p> <p>25 transaction available to it and had no other offer</p>
<p style="text-align: right;">78</p> <p>1 A Yes, and I told you how I established</p> <p>2 that.</p> <p>3 Q Okay. Take a look at the second</p> <p>4 sentence in paragraph 18. See that it says, TWA</p> <p>5 leases approximately 97 percent of its 180 aircraft?</p> <p>6 A Yes.</p> <p>7 Q Were you aware of that?</p> <p>8 MR. PRESS: I -- I'm going to object to</p> <p>9 these questions. You are -- you are cherrypicking</p> <p>10 things out of an order. And you haven't given the</p> <p>11 witness an opportunity to read the entire order</p> <p>12 which would give a fair context of what the judge</p> <p>13 has said here. And this is an improper use of this</p> <p>14 document, it is unfair to the witness, and I object.</p> <p>15 Go ahead.</p> <p>16 BY MR. TOAL:</p> <p>17 Q Were you -- were you aware of that</p> <p>18 information?</p> <p>19 A No.</p> <p>20 Q Would that have affected your analysis?</p> <p>21 A No.</p> <p>22 Q Okay. It goes on to say, it, referring</p> <p>23 to TWA, had to complete the auction and sale process</p> <p>24 no later than March 12, 2001, to avoid the very real</p> <p>25 prospect of having its fleet grounded by the section</p>	<p style="text-align: right;">80</p> <p>1 for value to which it could turn, nor could TWA rely</p> <p>2 on its self-help plan because TWA was unable to</p> <p>3 procure adequate capital infusion to implement that</p> <p>4 plan. Its only alternative was a free fall Chapter</p> <p>5 11 filing of the highlight denoted by piecemeal</p> <p>6 liquidation of the enterprise.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Is that information that you were aware</p> <p>10 of when you prepared your report?</p> <p>11 A Yes.</p> <p>12 MR. PRESS: Object to the form of the</p> <p>13 question. Assumes facts not in evidence.</p> <p>14 BY MR. TOAL:</p> <p>15 Q Is that something that might have</p> <p>16 affected your analysis had you been aware of it?</p> <p>17 A I can't tell you unless I -- without</p> <p>18 understanding more of the context of the whole,</p> <p>19 entire document here.</p> <p>20 Q You understand that a piecemeal</p> <p>21 liquidation of TWA would have been equivalent of TWA</p> <p>22 ceasing to fly?</p> <p>23 A Yes.</p> <p>24 (Farber-14 Rough copy of the</p> <p>25 transcript of Bill Compton marked for</p>

20 (Pages 77 to 80)

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<p style="text-align: right;">81</p> <p>1 identification.)</p> <p>2 <b>MR. TOAL: Let me mark as Farber</b></p> <p>3 <b>Exhibit-14, a rough copy of the transcript of the</b></p> <p>4 <b>deposition of Bill Compton.</b></p> <p>5 <b>BY MR. TOAL:</b></p> <p>6 <b>Q</b> Is this something you've seen before</p> <p>7 today?</p> <p>8 <b>A</b> No.</p> <p>9 <b>Q</b> And you know who Bill Compton is?</p> <p>10 <b>A</b> No.</p> <p>11 <b>Q</b> Bill Compton was the CEO of TWA at the</p> <p>12 time of the transaction with American Airlines.</p> <p>13 Does that refresh your recollection?</p> <p>14 <b>A</b> No. I -- I never knew who the CEO of</p> <p>15 TWA was.</p> <p>16 <b>Q</b> Okay. So look at page eight of this</p> <p>17 transcript. Take a look at page 14 -- line 14.</p> <p>18 You see the questions asked, as of 1999 when</p> <p>19 you became the CEO of TWA, can you describe the</p> <p>20 airline's competitive position within the industry?</p> <p>21 And the answer is, in 1999? The question is, yes.</p> <p>22 And the answer is, it was not good. And the</p> <p>23 question is, why is that? And the answer is, TWA,</p> <p>24 if you go back from the year 2000, hadn't made a</p> <p>25 profit in 12 years, an operating profit, any</p>	<p style="text-align: right;">83</p> <p>1 that TWA was going to cease flying imminently.</p> <p>2 <b>Q</b> And my question is whether the history</p> <p>3 of profitability of TWA would be expected to have</p> <p>4 any bearing on whether TWA was expected to cease</p> <p>5 flying imminently as of January 2001?</p> <p>6 <b>A</b> Not in the analysis I did, no.</p> <p>7 <b>Q</b> What about in the real world?</p> <p>8 <b>A</b> This is a real world. I did a real</p> <p>9 world analysis of a particular kind. In a different</p> <p>10 kind of analysis, someone else might consider that.</p> <p>11 I didn't.</p> <p>12 <b>Q</b> Take a look at page 21 of this</p> <p>13 transcript.</p> <p>14 And with respect to the analysis that you did,</p> <p>15 the factor that you focused on was whether there was</p> <p>16 a output free fall, correct, in determining whether</p> <p>17 TWA was expected to cease flying imminently?</p> <p>18 <b>A</b> I didn't see the size of their</p> <p>19 operations. I didn't look at their financials. I</p> <p>20 didn't see signs in their operations. That's all.</p> <p>21 <b>Q</b> And the factor that you focused on was</p> <p>22 whether there was an output free fall; correct?</p> <p>23 <b>A</b> Uh-huh.</p> <p>24 <b>Q</b> I'm sorry. Did you answer that last</p> <p>25 question?</p>
<p style="text-align: right;">82</p> <p>1 operating profit in twelve consecutive years. And</p> <p>2 if you would go back 30 years, you might just find a</p> <p>3 handful of years in which TWA earned an operating</p> <p>4 profit. TWA was unsuccessful for not only that year</p> <p>5 and a few years before that, but for decades. Do</p> <p>6 you see that?</p> <p>7 <b>A</b> Yes.</p> <p>8 <b>Q</b> Is that information that you were aware</p> <p>9 of when you prepared your report?</p> <p>10 <b>A</b> No.</p> <p>11 <b>Q</b> Is that information that, had you been</p> <p>12 aware of, might have affected your analysis?</p> <p>13 <b>A</b> No.</p> <p>14 <b>Q</b> Why not?</p> <p>15 <b>A</b> This isn't the kind of analysis I did.</p> <p>16 I -- you've asked me this morning several times,</p> <p>17 more than several times, whether I've considered the</p> <p>18 financial details of TWA, and I haven't. That's not</p> <p>19 how I -- I -- I -- I did my analysis.</p> <p>20 <b>Q</b> Is it your testimony that the history</p> <p>21 of profitability of TWA wouldn't have any bearing on</p> <p>22 whether it was expected to cease flying in January</p> <p>23 of 2001?</p> <p>24 <b>A</b> I'm saying based on my analysis, it</p> <p>25 didn't -- I concluded that it didn't appear to me</p>	<p style="text-align: right;">84</p> <p>1 <b>A</b> You asked me did the factor that I</p> <p>2 didn't consider --</p> <p>3 <b>Q</b> I asked you if the factor that you</p> <p>4 focused on in your analysis was whether there was an</p> <p>5 output free fall.</p> <p>6 <b>A</b> Yeah, uh-huh, yes.</p> <p>7 <b>Q</b> Okay. So on page 21 of this</p> <p>8 transcript, if you take a look at line nine, you see</p> <p>9 it says, you said that TWA's third bankruptcy filing</p> <p>10 was in January of 2001; is that right? The answer</p> <p>11 is, yes. The question is, as -- and as CEO, do you</p> <p>12 have an understanding of TWA's financial condition</p> <p>13 at the time of the third bankruptcy filing? And the</p> <p>14 answer is, I did. The question is, how would you</p> <p>15 describe it? And the answer is, it was worse than</p> <p>16 not good. It was bad. TWA was -- TWA was going to</p> <p>17 liquidate within days without a deal. Do you see</p> <p>18 that testimony?</p> <p>19 <b>A</b> Yes.</p> <p>20 <b>Q</b> Now, would that have affected your</p> <p>21 analysis if you had been aware of this testimony</p> <p>22 prior to preparing your report?</p> <p>23 <b>MR. PRESS: I object to the form of the</b></p> <p>24 <b>question. Assumes facts.</b></p> <p>25 <b>THE WITNESS: Perhaps, it would.</b></p>

21 (Pages 81 to 84)

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HENRY FARBER

<p style="text-align: right;">85</p> <p>1 <b>BY MR. TOAL:</b></p> <p>2 <b>Q</b> In what way?</p> <p>3 <b>A</b> Well, it would lead me to believe that</p> <p>4 perhaps -- perhaps TWA, I don't know if they were</p> <p>5 going to be able to find another suitor, but it</p> <p>6 would make it somewhat more likely that they would</p> <p>7 cease operations soon.</p> <p>8 <b>Q</b> Then the testimony goes on to say, what</p> <p>9 is the basis for your understanding that TWA was</p> <p>10 going to liquidate within days without a deal? And</p> <p>11 the answer is, a major issue was that we had an</p> <p>12 accounts receivable fund coming due that I</p> <p>13 believe -- I could be off by a week, but I believe</p> <p>14 it was due on January 10, 2001, and it was a hundred</p> <p>15 million bill that we owed. And in early January,</p> <p>16 TWA's total cash, total available cash was</p> <p>17 20 million. Put that in perspective, TWA was a</p> <p>18 company that on average had expenditures of</p> <p>19 10 million a day some days it was, of course, as an</p> <p>20 average. Some days it could be 30 million in a day,</p> <p>21 and the next day it would be one million. On</p> <p>22 average, it was a company that spent 10 million a</p> <p>23 day in expenses. So TWA had approximately</p> <p>24 20 million in cash, we owed a hundred million, we</p> <p>25 had negative cash flow, so it was not a good</p>	<p style="text-align: right;">87</p> <p>1 that TWA was going to liquidate within days without</p> <p>2 a deal, would that have led you to categorize TWA as</p> <p>3 being comparable to the airlines that were</p> <p>4 equivalent to airline B in your example from your</p> <p>5 report?</p> <p>6 <b>A</b> I don't know. I -- TWA, again, was</p> <p>7 still flying. They were still flying a full</p> <p>8 schedule which differentiates them quite</p> <p>9 dramatically from the other airlines in category B,</p> <p>10 most -- most of which were not flying at all. TWA</p> <p>11 was still flying.</p> <p>12 <b>Q</b> Your category B, Professor, is airlines</p> <p>13 that either had ceased flying or were expected to</p> <p>14 cease flying imminently; correct?</p> <p>15 <b>A</b> Yes.</p> <p>16 <b>Q</b> And if it's true that as of the time of</p> <p>17 the transaction that, absent the transaction, TWA</p> <p>18 was going to liquidate within days, would that</p> <p>19 qualify as being expected to cease flying</p> <p>20 imminently?</p> <p>21 <b>A</b> I'm telling you that my reading of the</p> <p>22 record was that there were other options for TWA,</p> <p>23 and it wasn't clear to me that they were going to</p> <p>24 cease flying imminently.</p> <p>25 <b>Q</b> I understand, but I'm asking you to</p>
<p style="text-align: right;">86</p> <p>1 situation.</p> <p>2 Do you see that?</p> <p>3 <b>A</b> Yes.</p> <p>4 <b>Q</b> And if you had been aware of that</p> <p>5 testimony prior to preparing your report, might that</p> <p>6 have affected your analysis about whether TWA is</p> <p>7 expected to cease flying imminently?</p> <p>8 <b>A</b> It was something I would have</p> <p>9 considered. There is more information that's</p> <p>10 needed. I don't know what TWA's revenue per day is,</p> <p>11 for example. This is all about expenditures and</p> <p>12 available cash. It is not about the revenues.</p> <p>13 <b>MR. PRESS: And it impeaches the</b></p> <p>14 <b>judge's supposed finding.</b></p> <p>15 <b>MR. TOAL: That's an objection, Allen?</b></p> <p>16 <b>MR. PRESS: Yes. I object to the use</b></p> <p>17 <b>of these documents. I mean, you are asking him to</b></p> <p>18 <b>assume facts that aren't true, and I do object to</b></p> <p>19 <b>this, Dan, but go ahead and ask your question.</b></p> <p>20 <b>MR. TOAL: That sounds more like a</b></p> <p>21 <b>speech than an objection.</b></p> <p>22 <b>MR. PRESS: Yeah. Call it what you</b></p> <p>23 <b>want.</b></p> <p>24 <b>BY MR. TOAL:</b></p> <p>25 <b>Q</b> Professor Farber, if -- if it was true</p>	<p style="text-align: right;">88</p> <p>1 assume that this testimony is true. You don't have</p> <p>2 to agree with that. I'm just asking you to make an</p> <p>3 assumption.</p> <p>4 <b>A</b> Well, the assumption is not about the</p> <p>5 testimony. You are asking me to agree that TWA</p> <p>6 would have stopped flying the next day, and the</p> <p>7 answer is, if TWA would have been expected to stop</p> <p>8 flying the next day, I would have had to classify</p> <p>9 that as imminently ceasing flying.</p> <p>10 <b>Q</b> Which would be equivalent to the</p> <p>11 airline B in your example; correct?</p> <p>12 <b>A</b> Yes.</p> <p>13 <b>Q</b> And on your chart, and on table one,</p> <p>14 the acquired airlines that you've indicated are</p> <p>15 comparable to airline B in your hypothetical are</p> <p>16 Frontier, Midwest and Links; correct?</p> <p>17 <b>A</b> But there is more. There is some --</p> <p>18 for example, I believe Delta/Northwest. Again, I --</p> <p>19 remember, I don't have in front of me the</p> <p>20 classification of all of them. I remember the three</p> <p>21 at the bottom that weren't flying at all, but there</p> <p>22 is also some near to the top that are higher up that</p> <p>23 are in that category.</p> <p>24 <b>Q</b> Okay. So -- but the ones that you</p> <p>25 identified, that you were able to identify earlier</p>

22 (Pages 85 to 88)

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<p style="text-align: right;">89</p> <p>1 today, were Frontier --</p> <p>2 A Well, but that's -- I should not have</p> <p>3 done that without the full list in front of me</p> <p>4 because it is not fair to just pick the ones at the</p> <p>5 bottom and say, yeah, they are in that category</p> <p>6 because there are others throughout the list that</p> <p>7 are in that category, as well.</p> <p>8 Q You believe that Northwest was an</p> <p>9 airline that had ceased flying --</p> <p>10 A No, no. I -- I say -- I'm not</p> <p>11 saying -- I have to get -- let me stop talking about</p> <p>12 specifics and tell you, I will get you, either today</p> <p>13 or soon, a list that tells you which of these are in</p> <p>14 which category. And from there, what you can do is</p> <p>15 ask what would be the effect on the list of</p> <p>16 moving -- you can have your people do that.</p> <p>17 Q Have you done that analysis --</p> <p>18 A No.</p> <p>19 Q -- of what would the effect be on the</p> <p>20 list if you had categorized TWA as an airline that</p> <p>21 was expected to cease flying?</p> <p>22 A No. No. I've never done that.</p> <p>23 Q So with regard to your knowledge about</p> <p>24 TWA's financial condition prior to the American</p> <p>25 Airlines transaction, do you know anything about</p>	<p style="text-align: right;">91</p> <p>1 Q And just on order of magnitude, how</p> <p>2 recently do you understand pilots --</p> <p>3 A Months. Months, I think, but I could</p> <p>4 be misremembering the scenario.</p> <p>5 Q Did you assess whether any pilots that</p> <p>6 were hired were hired to replace retiring pilots?</p> <p>7 A No.</p> <p>8 Q Did you assess whether the number of</p> <p>9 pilots who were hired were more or less than the</p> <p>10 number of pilots who were retiring or leaving the</p> <p>11 company?</p> <p>12 A No.</p> <p>13 Q Do you know anything about whether TWA</p> <p>14 had unencumbered assets?</p> <p>15 A No.</p> <p>16 Q Do you know anything about whether TWA</p> <p>17 had untapped lines of credit?</p> <p>18 A No.</p> <p>19 Q So beyond the transactions that are</p> <p>20 listed on -- in your table one in your report, your</p> <p>21 backup materials by -- by my count had arbitration</p> <p>22 decisions for an additional ten transactions.</p> <p>23 A Okay.</p> <p>24 Q Is that consistent with your</p> <p>25 recollection?</p>
<p style="text-align: right;">90</p> <p>1 what -- what TWA's level of profitability was at the</p> <p>2 time?</p> <p>3 A No.</p> <p>4 Q Do you know anything about its</p> <p>5 profitability trends?</p> <p>6 A No.</p> <p>7 Q Do you know anything about its yields</p> <p>8 at the time?</p> <p>9 A No. Yields? I'm sorry. I don't</p> <p>10 understand the question. What yields?</p> <p>11 Q Do you know anything about any of its</p> <p>12 yields, its yields on operations?</p> <p>13 A What's a yield?</p> <p>14 Q Are there certain yields with regard to</p> <p>15 TWA that you knew about?</p> <p>16 A Define yield for me, please.</p> <p>17 Q Do you know if there are any pilots who</p> <p>18 had been furloughed from TWA at the time of the</p> <p>19 transaction?</p> <p>20 A No.</p> <p>21 Q Do you know when TWA had most recently</p> <p>22 hired pilots before the transaction?</p> <p>23 A I don't know the precise date, but I</p> <p>24 believe there were some that were hired reasonably</p> <p>25 close to the date of acquisition.</p>	<p style="text-align: right;">92</p> <p>1 A I don't have a specific numerical</p> <p>2 recollection.</p> <p>3 Q Do you know why those transactions are</p> <p>4 not included on table one?</p> <p>5 A Lack of information.</p> <p>6 Q Do you know which information was</p> <p>7 lacking in those situations?</p> <p>8 A No.</p> <p>9 Q Did you have enough information in</p> <p>10 those situations to calculate a proportional</p> <p>11 difference in mean rank?</p> <p>12 A I don't know.</p> <p>13 Q One of the transactions on your table</p> <p>14 one is Texas International and Continental; correct?</p> <p>15 A Yes.</p> <p>16 Q And in that transaction, Texas</p> <p>17 International, although it is a smaller airline, was</p> <p>18 the acquiring airline; correct?</p> <p>19 A Correct.</p> <p>20 Q And you -- you actually used that</p> <p>21 transaction as establishing your lower bound for</p> <p>22 what an alternative seniority integration list would</p> <p>23 have looked like in this case; correct?</p> <p>24 A Uh-huh.</p> <p>25 Q So here you calculated a proportional</p>

23 (Pages 89 to 92)

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<p style="text-align: right;">93</p> <p>1 difference of mean rank of minus .249. Do you see 2 that?</p> <p>3 A Yes.</p> <p>4 Q And your calculation in this case for 5 an alternative seniority list should have looked 6 like, for TWA, uses a proportional difference in 7 mean rank of minus .15; correct?</p> <p>8 A Repeat the question, please.</p> <p>9 Q Yeah. The question is, in your best 10 estimate of what an alternative seniority list 11 should have looked like in this case, but for this 12 alleged breach of the duty of fair representation by 13 ALPA, you assumed that the but-for seniority list 14 should have a proportional difference in mean rank 15 of .15; correct?</p> <p>16 A My estimate of the -- of the 17 proportional difference in mean ranks on the 18 but-for list -- my estimate of the proportional 19 difference in reason ranks on the but-for seniority 20 list was about minus .15.</p> <p>21 Q And so your estimate concludes that the 22 TWA pilots should have done relatively better than 23 the Continental pilots in the -- their transaction 24 with Texas International; correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">95</p> <p>1 Q Do you recall in the arbitration 2 decision concerning Texas International and 3 Continental regarding seniority integration, that 4 the arbitrator indicated that he viewed that 5 transaction as being unique?</p> <p>6 A No, I don't recall that.</p> <p>7 Q Did you personally read the arbitration 8 decision regarding Texas International and 9 Continental?</p> <p>10 A Yes, I did.</p> <p>11 Q Do you -- in reviewing the arbitration 12 decisions, do you recall that a number of the 13 arbitration decisions say that all seniority 14 integrations are heavily dependent on the particular 15 facts of those cases?</p> <p>16 A Yes.</p> <p>17 Q Is that a proposition with which you 18 agree?</p> <p>19 A I agree that facts are important.</p> <p>20 Q Do you agree that these arbitration 21 resolutions concerning seniority integration tend to 22 be heavily fact dependent?</p> <p>23 A Yes.</p> <p>24 Q Now, do you recall that when 25 Continental was acquired, that it was acquired</p>
<p style="text-align: right;">94</p> <p>1 Q And did you, in making that conclusion, 2 compare the promotional opportunities for 3 Continental pilots compared to promotional 4 opportunities for TWA pilots?</p> <p>5 A No.</p> <p>6 Q Did you compare how many domiciles TWA 7 had relative to Continental?</p> <p>8 A No.</p> <p>9 Q Did you compare how many pilots TWA 10 had -- TWA had relative to Continental?</p> <p>11 A No.</p> <p>12 Q Did you compare how much long-range 13 flying TWA pilots did compared to Continental 14 pilots?</p> <p>15 A No.</p> <p>16 Q Did you compare the number of large, 17 wide body aircraft that Continental pilots operated 18 relative to the number of large, wide body aircraft 19 that TWA pilots operated?</p> <p>20 A No.</p> <p>21 Q Did you compare the pay differentials 22 between TWA and American Airlines relative to pay 23 differentials between Continental and Texas 24 International?</p> <p>25 A No.</p>	<p style="text-align: right;">96</p> <p>1 through a hostile takeover?</p> <p>2 A Yes.</p> <p>3 Q Do you recall any indication in the 4 arbitration decision that Continental was in a 5 weakened financial condition?</p> <p>6 A I don't recall the specifics.</p> <p>7 Q So as you sit here today, do you have 8 any recollection of Continental being in a weakened 9 financial position?</p> <p>10 A As -- as I said, I -- I would have to 11 look again at the report.</p> <p>12 Q I'm just asking, as you sit here today, 13 do you have a recollection of whether or not 14 Continental was in a weakened financial position?</p> <p>15 A Well, I have a recollection based on 16 the fact that it is categorized as a type D air -- a 17 type C/D merger, which means that the acquired 18 airline was in somewhat weakened financial 19 condition.</p> <p>20 Q Do you have any recollection about 21 whether Continental was in need of a transaction in 22 order to continue operations?</p> <p>23 A I don't recollect the details.</p> <p>24 MR. TOAL: I will mark as Farber 25 Exhibit-15, a copy of the arbitration decision</p>

24 (Pages 93 to 96)

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<p style="text-align: right;">97</p> <p>1 concerning Continental Airlines and Texas 2 International. 3 (Farber-15 Copy of the arbitration 4 decision concerning Continental Airlines and 5 Texas International marked for 6 identification.) 7 BY MR. TOAL: 8 Q Is this a document you've seen before, 9 Professor Farber? 10 A Yes. 11 Q Have you reviewed this personally? 12 A Yes. 13 Q Did you read it in its entirety? 14 A Yes. Perhaps not with as much care as 15 I might have, but I did read it, yes. 16 Q Okay. So if I could direct your 17 attention to page 42 of the decision. Do you see 18 that there is a -- a B halfway down the page? 19 A Yes. 20 Q Okay. So do you see that it says, 21 after B, the two pilot groups had different job 22 expectations and equities absent merger? 23 A Yes. 24 Q And do you see the abbreviation CAL 25 pilots here?</p>	<p style="text-align: right;">99</p> <p>1 to the analysis that you did? 2 A No. 3 Q And more particularly, were they 4 relevant to the analysis you did -- well, withdrawn. 5 Is it your view that the TWA pilots had better 6 long-term promotional opportunities than the 7 American Airlines pilots prior to the transaction? 8 A I have no view. 9 Q No view one way or the other? 10 A Correct. 11 (Farber-16 Copy of the arbitration 12 decision regarding the Federal Express/Flying 13 Tigers marked for identification.) 14 MR. TOAL: I'm going to mark as Farber 15 Exhibit-16, a copy of the arbitration decision from 16 the Federal Express Flying Tigers decision. 17 BY MR. TOAL: 18 Q Is this a document you've seen before, 19 Professor Farber? 20 A Yes. 21 Q Did you personally review this? 22 A Yes. 23 Q Did you read this in its entirety? 24 A Yes. 25 Q This is the transaction that you used</p>
<p style="text-align: right;">98</p> <p>1 A Yes. 2 Q Do you know what CAL stands for? 3 A Yes. 4 Q What is that? 5 A Continental Airlines. 6 Q Okay. So it says, the CAL pilots 7 started as second officers but (assuming survival of 8 the carrier) had more long-term promotional 9 opportunities, a wider range of domiciles from which 10 to select, better collective bargaining agreements, 11 bigger aircraft, more long-range international 12 flying, and higher pay potential than did TXI 13 pilots. Do you see that? 14 A Yes. 15 Q Were any of those things true of the 16 TWA pilots with respect to their transaction with 17 American Airlines? 18 A I don't know. 19 Q That's not something you analyzed? 20 A No. 21 Q And were any of those -- any of those 22 things, long-term promotional opportunities, wider 23 range of domiciles, better collective bargaining 24 agreement, bigger aircrafts, more long-range 25 international flying, higher pay potential, relevant</p>	<p style="text-align: right;">100</p> <p>1 as the upper bound in your list of comparables; 2 correct? 3 A Yes. 4 Q Let me ask you to take a look at page 5 3758, using the numbers at the bottom of the page, 6 the bottom right. 7 The last full paragraph at the bottom of the 8 page, do you see it says, based on this record, it's 9 evident enough that Tiger is not a failing carrier 10 as that term is commonly understood. It is equally 11 evident, however, that it was not markedly robust, 12 nor the beneficiary of a sustained period of 13 wellbeing. Do you see that testimony? 14 A Yes. 15 Q Okay. Is that consistent with your 16 understanding? 17 A Yes. 18 Q And in this transaction, Tiger is the 19 acquired carrier; correct? 20 A Correct. 21 Q Now, carry over to page 29. 22 Do you see the first full sentence on the page 23 says, nevertheless, talking about arbitrators, they 24 have taken into account the benefits, monetary and 25 otherwise, that pilots of a weaker carrier attain by</p>

25 (Pages 97 to 100)

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HENRY FARBER

<p style="text-align: right;">101</p> <p>1 virtue of a merger with one -- one more stable, even  2 when, as here, it cannot be said that the more  3 stable actually rescued the other from imminent  4 demise. Do you see that?  5 A Yes.  6 Q Do you understand that in this  7 transaction Tiger was not at risk, at least in the  8 arbitrator's view of an imminent demise?  9 A Yes.  10 Q And then the following sentence says,  11 at the time of the merger, Tiger was experiencing  12 record profits and generally improving its yields  13 and margins, though both of the latter had dropped  14 somewhat from 1987 to 1988. Do you see that?  15 A Yes.  16 Q And according to your chart, the year  17 of the -- the year of this transaction was 1989;  18 correct?  19 A Yes.  20 Q So at the time of the transaction  21 between American Airlines and TWA, was TWA  22 experiencing record profits?  23 A No.  24 Q At the time of the transaction with  25 American Airlines, was TWA a failing carrier?</p>	<p style="text-align: right;">103</p> <p>1 It is equally -- equally evident, however,  2 that it was not markedly robust nor the beneficiary  3 of a sustained period of wellbeing. That, to me,  4 said, gee, they are not in great financial shape,  5 but they are okay. They are not going to fail  6 tomorrow. And that was point number one in  7 including this merger in the comparison group.  8 That's one of the two features that we used.  9 Q You considered creating other  10 categories concerning the financial condition of the  11 acquired carrier?  12 A No.  13 Q Why not?  14 A Well, I thought about how I might do  15 it, and I thought of one that made sense. I  16 realized, number one, I couldn't have too many  17 categories because I don't have that many mergers  18 that I can do a calculation on. That was probably  19 the main thing. You know, again, if I had 3,000  20 mergers, I could have done a much more nuanced  21 statistical analysis. You would have needed  22 Dr. Halpern here today to help you with that.  23 But we didn't have that many -- we didn't have  24 that many mergers, so I knew I needed to have a  25 limited number of categories. I wanted to capture</p>
<p style="text-align: right;">102</p> <p>1 A I don't know -- I don't know how to  2 answer that question. It was certainly not in good  3 financial shape.  4 Q Did you view it, based on the analysis  5 that you conducted, as failing?  6 A I -- I don't -- I don't know how to use  7 the term failing here. Let's think about an action.  8 As -- as I said, I categorized it as an airline that  9 was not going to fail imminently. So maybe it is  10 not failing. It was weak. Quite weak. Weaker  11 apparently than Flying Tiger.  12 Q And what's the rationale for including  13 Tiger and TWA in the same category even though TWA  14 was weaker financially than Tiger?  15 A It's -- every -- it's certainly the  16 case that in the comparison group there are airlines  17 that differ in various ways and that's the nature  18 of -- of using an average. Sometimes it goes one  19 way and sometimes it goes the other. That's why  20 there's an upper bound and a lower bound. The  21 rationale here is that, yes, TWA was weaker than  22 Flying Tiger, but the arbitrator noted that Flying  23 Tiger was not in great financial shape. You read  24 that to me just a minute ago. I can read it back to  25 you.</p>	<p style="text-align: right;">104</p> <p>1 what I considered, you know, after reading -- I  2 started by reading a range of arbitration reports,  3 saying, what are the arbitrators talking about?  4 What are they sensitive to? And how do I capture  5 that in a limited number of categories? And as a  6 result, I said, well, gee, there are really bad and  7 really good in the middle. TWA appears to be in the  8 middle. There is a fair number, I guess seven in  9 the middle, and that's how I went from there.  10 Q Well, why couldn't you have decided  11 that in order to have truly comparable airlines  12 within each grouping, you needed to have a greater  13 number of categories?  14 A Because I couldn't -- the analysis  15 can't support a greater number of categories because  16 there wouldn't be enough -- are there any other  17 mergers that look exactly like TWA? No. So if I --  18 you know, at the other extreme, it's -- it's -- you  19 know, if every arbitration is pseudo generous, and  20 you can't learn anything from anything else, then  21 there is one basis on which to make a calculation.  22 What -- you know, what we do is use a  23 generally accepted technique to create a comparison  24 group, take the average of the comparison group,  25 which then tends to net out the differences one way</p>

26 (Pages 101 to 104)

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HENRY FARBER

<p style="text-align: right;">105</p> <p>1 or the other. You know, like a fat person and a  2 skinny person, you average them and you get an  3 average person. You know, a really healthy airline,  4 a somewhat weaker airline, you get an average  5 airline. And you take that average, and -- and there  6 is more than one factor so there is not just a  7 financial health.  8 There is also the value they bring to the  9 merger. Those are all related to things like career  10 expectations. There was no benefit with the data  11 available to have a larger number of categories. In  12 fact, it would have resulted probably in a less  13 precise estimate.  14 Q But you could have concluded that in  15 order to create categories with comparable airlines,  16 I need to have a certain number. And if that number  17 prevented you from doing an average, you could have  18 stated that as your conclusion; correct?  19 A It could have, but I felt I could make  20 it come up with a credible estimate in three  21 categories.  22 Q And if you -- would you agree with me  23 that if you have a category with dissimilar  24 airlines, that the average is not going to be  25 predictive of the results of any future transaction</p>	<p style="text-align: right;">107</p> <p>1 outcomes and cases where there hadn't been an  2 allegation of breach of -- there hadn't been any  3 breach of the duty of fair representation, and said  4 we understand each case is a little bit different.  5 That's why we look at an average. And what we get  6 from the average, it says, you know, other things  7 equal, it's just basically saying that sometimes  8 it's higher and sometimes it's lower, and on average  9 we get it right. This is, you know, this is a  10 commonly accepted way of doing what's called --  11 doing what's called evaluation in -- in empirical  12 economics. Not just in labor economics, but in  13 other areas of economics.  14 Q So is the methodology that you were  15 referring to, the calculation of proportional  16 difference in mean ranks?  17 A No. No. The -- I'm taking it -- I'm  18 taking the big picture and saying how is Professor  19 Farber approaching this problem? What he is doing  20 is he is saying, look. We have a situation where  21 ALPA breached their duty of fair representation. We  22 need a scientifically accepted method. We need a  23 reliable method to come up with an estimate of what  24 would have happened in that case absent the breach  25 of duty of fair representation. The -- the way --</p>
<p style="text-align: right;">106</p> <p>1 within that category?  2 A No.  3 Q And when you talked about a generally  4 accepted methodology, what methodology were you  5 referring to?  6 A It was something we talked about  7 yesterday, with the idea that when there is some --  8 some -- I will call it some -- I will call it a bad  9 act, discrimination or something. What you want to  10 ask is, what would have happened absent some  11 particular act? You have to observe what the  12 outcome would have been in the situation where there  13 wasn't the allegation that there was a particular  14 action.  15 In this case, it was the duty -- it was the  16 shirking by ALPA of their duty of fair  17 representation with a breach. In more legal terms,  18 the breach of the duty of fair representation. So I  19 found arbitrations that looked similar, just like I  20 would find people doing similar work in an  21 environment that is non-discriminatory, and I would  22 look at the pay of -- of people from that situation,  23 and compare it to the pay in the situation where  24 there has been the -- the discrimination.  25 And in this case I looked at arbitration</p>	<p style="text-align: right;">108</p> <p>1 the way an economist would look at this would be to  2 say, we need to find situations where there was not  3 a breach of the duty of fair representation,  4 situations that on average are similar. The key is  5 on average. No two situations are exactly  6 identical.  7 So, on average, I -- I -- I've taken  8 essentially a sample of cases like that, the ones I  9 can find. They weren't chosen to be one way or the  10 other. They were simply chosen because they met the  11 criteria I laid out to make them in the broadest  12 terms similar to the TWA case. And you can go  13 through the record and say this one is a little bit  14 different that way. That one is a little bit  15 different the other way. But, on average, that's  16 what you get. And that's -- that's the  17 scientifically accepted way of doing this.  18 Q Just to be clear, what you have done  19 here is not a scientifically accepted method for  20 predicting the result of a -- of a seniority  21 integration in the absence of a breach of a duty of  22 fair representation; correct?  23 A When you phrase it that narrowly, no,  24 because no one has ever done that. No one's ever  25 had call to do that before. So that what you have</p>

27 (Pages 105 to 108)

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HENRY FARBER

<p style="text-align: right;">109</p> <p>1 to do is go to the accepted science on looking at 2 how does one calculate what happened absent a 3 certain behavior, and there is a scientifically 4 accepted way of doing it, and that's what I've done. 5 Q And what's the name for the 6 scientifically accepted approach that you used? 7 A What's the name for it? I don't know 8 that I have a formal name for it. I -- I want to 9 say it's -- I don't have a particular name for it. 10 Q So as far as I can tell, the thing that 11 you've done here, that there is a scientific or 12 economic name for is that you calculated a 13 proportional difference in mean ranks; correct? 14 A Well, you can calculate proportional 15 between anything you want. What I'm saying is it's 16 -- it's -- the -- the scientific method of it is -- 17 is -- has more to it than just a calculation. It is 18 not -- you know, the calculation is the least of it. 19 The calculation took us two seconds. You know, 20 the -- the -- the hard part is to say, how do I set 21 up what you might think of as, the phrase we use is 22 natural experiment. 23 We have a situation here where we observe an 24 outcome in the presence of a breach of the duty of 25 fair representation. And the legitimate question to</p>	<p style="text-align: right;">111</p> <p>1 economic work generally. 2 Q But you've never worked in the -- on a 3 matter dealing with seniority integration before; 4 correct? 5 A That's correct. 6 Q And you had no experience in that area 7 before this case? 8 A That's correct. 9 Q And there was no science to how you 10 developed your categories; correct? 11 A I -- I resist the term no science. No. 12 I used my best professional judgment. 13 Q And there -- there are no objective 14 metrics for how you developed your categories; 15 correct? 16 A That is correct. And one could 17 calculate alternative comparison groups based on 18 different characterizations of the data. For 19 example, one, for example, I haven't thought about 20 this before, but one, you might say let's just 21 re-categorize groups. Take airlines that are shut 22 down and look at them. Take airlines that are 23 flying but in financial distress. Take them. Take 24 airlines that are healthy. Take them. That would 25 be an alternate three category view of the world.</p>
<p style="text-align: right;">110</p> <p>1 ask is, what is the effect of this breach of duty? 2 In order to do that, I have to -- unfortunately, I 3 can't go to the alternate universe and run the 4 TWA/American transaction without the doing of the 5 job. I can't do that. 6 So what I have to do, and this is the science 7 of it, what I have to do is come up with another set 8 of cases that in important respects are similar, but 9 obviously are always going to vary, and look at the 10 average outcome in those cases where the both units 11 did their job, and compare the outcomes. The 12 calculation of the proportional mean difference is 13 simply the metric I use to compare the difference in 14 this world that's not tainted with the world that's 15 tainted. 16 Q So when you are talking about what you 17 did that you think was scientifically accepted, do 18 you think the creation of the categories that you 19 developed was the product of some scientific method? 20 A I'm saying the framework I used is the 21 product of the scientific method, and I use my 22 expertise as an economist to come up with the 23 categories that made sense given my experience doing 24 this kind of analysis, not in the litigation 25 framework particularly, but in -- in -- in my</p>	<p style="text-align: right;">112</p> <p>1 You could take -- create -- if you really 2 wanted to go to four categories: Airlines that are 3 shut down; airlines that are flying but could well 4 shut down soon; airlines that are flying but weak, 5 but could continue to flying; airlines that would 6 fly forever. I don't know what effect of doing any 7 of those alternatives were, but you could do that or 8 I could do that. 9 Q And in using a scientific method, you 10 would try and take into account other variables that 11 might account for the proportional difference in 12 mean rank that you are seeing in these transactions; 13 correct? 14 A As I said, the -- the paucity, the 15 micronumerosity, the phrase that I used -- he always 16 likes that -- the micronumerosity that I talked 17 about yesterday means that I can't consider 18 explicitly very many different things. The fact is 19 that things like career expectations are often 20 highly correlated with the financial condition of 21 the carrier. 22 Airlines that are weaker financially offer 23 less good career expectations to their pilots. 24 Airlines that are stronger financially tend to offer 25 stronger career expectations to pilots. They tend</p>

28 (Pages 109 to 112)

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HENRY FARBER

<p style="text-align: right;">113</p> <p>1 to, not a hundred percent of the time. So by</p> <p>2 categorizing them and using the financial condition</p> <p>3 of the airline, they're in trouble, they are not in</p> <p>4 trouble, like that, I'm also capturing part of the</p> <p>5 career expectations. So even though I don't name</p> <p>6 career expectations as something I explicitly</p> <p>7 consider, it is accounted for indirectly in my</p> <p>8 analysis. It is not ignored.</p> <p>9 Q Well, my question is, with respect to,</p> <p>10 if your job is to isolate the impact of an alleged</p> <p>11 breach of the duty of fair representation, in a</p> <p>12 scientific methodology, you would want to take into</p> <p>13 account all of the other explanatory variables that</p> <p>14 impact the metric that you are using; correct?</p> <p>15 A Doing real science in the real world,</p> <p>16 limited by the data available, we do the best</p> <p>17 scientific thing we can, and you can't take account</p> <p>18 of every single detail --</p> <p>19 Q So --</p> <p>20 A -- directly. Indirectly, I do account</p> <p>21 for an awful lot of this.</p> <p>22 Q Well, you don't account for, for</p> <p>23 instance, length of service of -- of the pilots in</p> <p>24 either the acquired or the acquiring airline;</p> <p>25 correct?</p>	<p style="text-align: right;">115</p> <p>1 trying to help you here. The following example.</p> <p>2 Imagine you have two airlines merging, one of</p> <p>3 which started 50 years ago and hasn't hired a pilot</p> <p>4 in 30 years, so all their pilots have at least 30</p> <p>5 years seniority. It's crazy numbers. The other</p> <p>6 airline started ten years ago, so all their pilots</p> <p>7 were hired in the last ten years. Right? Maybe I'm</p> <p>8 making your case for you. I don't know.</p> <p>9 Our method of merging -- and they have equal</p> <p>10 numbers of pilots, and we merge them in what I'll</p> <p>11 call a fair ratio. So, take one, take the next.</p> <p>12 Take one, take the next. Take one, take one from</p> <p>13 the next. You are going to do that in order, and</p> <p>14 what's going to look -- certainly pilots from the</p> <p>15 newer airlines are going to be higher -- higher on</p> <p>16 the list than some -- some pilots from the new</p> <p>17 airline will be higher on the list than some pilots</p> <p>18 from the older airline, all of whom have more</p> <p>19 seniority. Right?</p> <p>20 But that's the nature of the merger of</p> <p>21 seniority lists always. That's why often, when a</p> <p>22 legacy airline with pilots with lots of seniority</p> <p>23 are being acquired, the first thing they say is, we</p> <p>24 want a date of hire merge, because that's going to</p> <p>25 put them all at the top of the list. And the</p>
<p style="text-align: right;">114</p> <p>1 A We do. That's how the seniority list</p> <p>2 is constructed, based on length of service. That's</p> <p>3 what the seniority list is, is length of service.</p> <p>4 Q Do you evaluate for each of the</p> <p>5 transactions on your list, the extent to which the</p> <p>6 proportional difference in mean rank that you see is</p> <p>7 attributable to differences in seniority from the</p> <p>8 acquired and the acquiring airline?</p> <p>9 A The lists I come up with preserve the</p> <p>10 seniority ranking within the airlines. The</p> <p>11 proportional mean difference in ranks that we</p> <p>12 compute then is also based on the seniority rankings</p> <p>13 of the pilots in the two airlines. So I'm really</p> <p>14 not sure what else I could be doing with the</p> <p>15 seniority.</p> <p>16 Q Well, your metric of proportional</p> <p>17 difference in mean rank could be affected by when</p> <p>18 each of the airlines in the transaction actually</p> <p>19 hired pilots; correct?</p> <p>20 A No. It is not a date of hire merge.</p> <p>21 It's -- it's -- it's affected entirely by the</p> <p>22 ordering within airline, within origin airline of</p> <p>23 the pilots is based on their date of hire. But you</p> <p>24 can imagine -- let -- let -- let me give you the</p> <p>25 following example that might make this clearer. I'm</p>	<p style="text-align: right;">116</p> <p>1 arbitrators always reject that, virtually always</p> <p>2 reject that.</p> <p>3 Q Have you seen cases in which</p> <p>4 arbitrators take into account date of the hire in</p> <p>5 constructing a merge list?</p> <p>6 A Have I seen -- frankly, there is a lot</p> <p>7 of lip service paid to date of hire, but it turns</p> <p>8 out, aside from ordering within the carriers, they</p> <p>9 are more concerned about career expectations, and</p> <p>10 financial health, and things like that.</p> <p>11 Q Well, would you agree that if an</p> <p>12 arbitrator did take date of hire into consideration,</p> <p>13 and the acquiring and the acquired pilots had</p> <p>14 differences in their date of hire, that's -- that's</p> <p>15 a factor that could influence the proportional</p> <p>16 difference in mean rank between the two airlines?</p> <p>17 A If the arbitrator took into account</p> <p>18 date of the hire, sure.</p> <p>19 Q What do you know about the transaction</p> <p>20 between Delta and Pan Am?</p> <p>21 A I know this is one -- this is the one</p> <p>22 that was not decided by an arbitration, and I</p> <p>23 believe we went outside the arbitration award to try</p> <p>24 to get some information on the financial health and</p> <p>25 so on.</p>

29 (Pages 113 to 116)

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<p style="text-align: right;">117</p> <p>1 Q And do you know whether that</p> <p>2 transaction involved Delta acquiring all Pan Am</p> <p>3 pilots or only certain Pan Am pilots?</p> <p>4 A I don't know. I don't recall.</p> <p>5 (Farber-17 July 12, 1991 article from</p> <p>6 the New York Times entitled Pan Am Agrees To</p> <p>7 Sell Major Routes To Delta marked for</p> <p>8 identification.)</p> <p>9 BY MR. TOAL:</p> <p>10 Q Let me show you a document that I will</p> <p>11 mark as Farber Exhibit-17, an article from the New</p> <p>12 York Times dated July 12, 1991, entitled Pan Am</p> <p>13 agrees to sell major routes to Delta.</p> <p>14 Is this an article you've seen before,</p> <p>15 Professor?</p> <p>16 A No. I have not seen this -- reviewed</p> <p>17 this personally, no. Is it --</p> <p>18 Q Okay. Let me direct your attention to</p> <p>19 the beginning of this article.</p> <p>20 It says, bankrupt and crippled by its failure</p> <p>21 to develop a solid, domestic route, Pan Am World</p> <p>22 Airways wrote an end to a saga as America's once</p> <p>23 proud flight carrier by agreeing Thursday to sell</p> <p>24 off its remaining premier international routes. Do</p> <p>25 you see that?</p>	<p style="text-align: right;">119</p> <p>1 routes had sufficient seniority to bid into those</p> <p>2 flights, might that suggest that the Pan Am pilots</p> <p>3 on any integrated list would -- would do better?</p> <p>4 A Not necessarily. It -- it depends on</p> <p>5 the nature of -- of how the lists were merged. If</p> <p>6 they were merged on a strict date-of-hire basis,</p> <p>7 that would be true. It may be true that -- and --</p> <p>8 and this was the result of some negotiations. I</p> <p>9 look at this -- it is true, while it -- it is</p> <p>10 somewhat mild, it is also true, on average, the Pan</p> <p>11 Am pilots did worse than the Delta pilots. That's</p> <p>12 why the difference is negative on table one. So the</p> <p>13 Pan Am pilots, on average, did worse on the combined</p> <p>14 seniority list.</p> <p>15 Q But you don't know the composition of</p> <p>16 that group of Pan Am pilots; correct?</p> <p>17 A No.</p> <p>18 Q And you don't know whether they were --</p> <p>19 if the legacy Pan Am pilots were the most senior</p> <p>20 pilots or not; correct?</p> <p>21 A I don't. That's correct.</p> <p>22 Q And you don't know whether any</p> <p>23 relatively recent hires at Pan Am were part of this</p> <p>24 transaction; correct?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">118</p> <p>1 A Yes.</p> <p>2 Q Does this refresh any recollection that</p> <p>3 you have about whether the Pan Am transaction</p> <p>4 involved an acquisition of substantially all of Pan</p> <p>5 Am's assets or only select assets?</p> <p>6 A I -- I -- I can read this here. I see</p> <p>7 that.</p> <p>8 Q Do you have any independent knowledge</p> <p>9 about whether the Pan Am transaction involved only</p> <p>10 part of the airline's assets?</p> <p>11 A No.</p> <p>12 Q And with respect to the pilots that</p> <p>13 were hired, do you know anything about where they</p> <p>14 fell on Pan Am's seniority list?</p> <p>15 A No.</p> <p>16 Q And did you undertake any analysis to</p> <p>17 try and understand whether the placement of the Pan</p> <p>18 Am pilots on the integrated seniority list was</p> <p>19 explained by their seniority?</p> <p>20 A Well, certainly it was explained by</p> <p>21 their seniority. I mean, because to the ordering of</p> <p>22 the Pan Am pilots on the combined list is in order</p> <p>23 of their seniority.</p> <p>24 Q Well, if Delta was acquiring Pan Am's</p> <p>25 premier international routes and the pilots on those</p>	<p style="text-align: right;">120</p> <p>1 Q Paragraph 53 of your report, you say</p> <p>2 that TWA was not comparable to Links, Midwest, or</p> <p>3 the first Frontier because, while it was weak</p> <p>4 financially, it was able to continue flying routes.</p> <p>5 A Correct. Paragraph --</p> <p>6 Q -- 53.</p> <p>7 A 53.</p> <p>8 Q And are you offering an expert opinion</p> <p>9 with regard to that statement that TWA was not</p> <p>10 comparable to Links, Midwest, or first Frontier?</p> <p>11 A I'm -- I'm -- I'm saying what I said</p> <p>12 here. I said TW -- it was weak financially. It was</p> <p>13 able to continue flying routes. Yes, it was flying</p> <p>14 routes.</p> <p>15 Q Is that --</p> <p>16 A That's an observation.</p> <p>17 Q That's an observation. Is that an</p> <p>18 expert opinion you are offering?</p> <p>19 A It is an observation.</p> <p>20 Q So is the answer to my question, no?</p> <p>21 A They were flying routes. Yeah, I mean,</p> <p>22 yes. I suppose. Maybe it is not -- I don't know --</p> <p>23 I don't know if an observation is an expert opinion</p> <p>24 or not. I'm observing a fact.</p> <p>25 Q But --</p>

30 (Pages 117 to 120)

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HENRY FARBER

<p style="text-align: right;">121</p> <p>1       A    TW -- Frontier -- TWA was flying routes</p> <p>2   and Links, Midwest, and Frontier were not. Ergo,</p> <p>3   they are not compatible. Is that an expert</p> <p>4   conclusion?</p> <p>5       Q    Do you have any expertise in evaluating</p> <p>6   whether airlines are comparable to one another in</p> <p>7   terms of their financial condition?</p> <p>8       A    I'm saying that I didn't say that.</p> <p>9   What I was saying was --</p> <p>10      Q    This is a new question. I'm not --</p> <p>11      A    Okay.</p> <p>12      Q    My question is, do you have expertise</p> <p>13   in evaluating whether two airlines are comparable to</p> <p>14   one another in terms of their financial condition?</p> <p>15       <b>MR. PRESS: Didn't we go through this</b></p> <p>16   <b>ad nauseam yesterday? Well, the answer to that is,</b></p> <p>17   <b>yes, we did. It's been asked and answered.</b></p> <p>18       <b>THE WITNESS: I have expertise to know</b></p> <p>19   <b>whether two airlines, in general terms, are</b></p> <p>20   <b>comparable in financial condition.</b></p> <p>21   <b>BY MR. TOAL:</b></p> <p>22      Q    And what -- what expertise do you have</p> <p>23   in that area?</p> <p>24      A    Well, I can -- again, I can -- I'm</p> <p>25   trained as an economist. I can -- you know, I can</p>	<p style="text-align: right;">123</p> <p>1   transaction?</p> <p>2      A    As I said, as I sit here in front of</p> <p>3   me, I don't have the categorization.</p> <p>4      Q    I believe you said in your report that</p> <p>5   you tended to do further research, at footnote 36 on</p> <p>6   page 18.</p> <p>7      A    Let me -- let me --</p> <p>8      Q    Take a look at page 18.</p> <p>9      A    It might say in -- the answer to your</p> <p>10   previous question might be in my report.</p> <p>11      What group did I put them in?</p> <p>12      Q    I don't think the -- the categorization</p> <p>13   is in your report, but at footnote 36 you say, I</p> <p>14   have not been able to determine why former AirTran</p> <p>15   pilots were placed so low on their post transaction</p> <p>16   seniority list following the Southwest/AirTran</p> <p>17   transaction --</p> <p>18      A    Right.</p> <p>19      Q    -- and will continue to research this</p> <p>20   question.</p> <p>21      A    Right.</p> <p>22      Q    So what have you done to continue to</p> <p>23   research that question?</p> <p>24      A    We simply -- we -- we -- we spent some</p> <p>25   time trying to search sources, various sources,</p>
<p style="text-align: right;">122</p> <p>1   read -- read -- I can read materials that are --</p> <p>2   that are put in front of me, and I -- I have -- I've</p> <p>3   told you the purpose to which I've put, you know,</p> <p>4   that analysis, the -- the -- the rough</p> <p>5   categorization of the airlines into different</p> <p>6   categories.</p> <p>7      Q    You mentioned the Ichan proposal as a</p> <p>8   potential alternative for TWA in the event there was</p> <p>9   no transaction with American Airlines; correct?</p> <p>10     A    Yes.</p> <p>11     Q    Do you know anything about the position</p> <p>12   of the TWA pilots regarding a -- any transaction</p> <p>13   involving Carl Ichan?</p> <p>14     A    No.</p> <p>15     Q    Are you aware that the TWA MEC passed a</p> <p>16   resolution indicating that they would not</p> <p>17   participate or support any transaction involving</p> <p>18   Carl Ichan?</p> <p>19     A    No.</p> <p>20     Q    Is that relevant to your analysis?</p> <p>21     A    No.</p> <p>22     Q    On table one, you list a transaction</p> <p>23   between Southwest and AirTran; correct?</p> <p>24     A    Yes.</p> <p>25     Q    And how did you categorize that</p>	<p style="text-align: right;">124</p> <p>1   again, online and so on, to try to get more</p> <p>2   information on what went on there. We've been</p> <p>3   unable to find anything to shed -- to shed light</p> <p>4   on -- on -- on why that transaction looks the way it</p> <p>5   does.</p> <p>6      Q    Is that work you did after submitting</p> <p>7   your report?</p> <p>8      A    Well, as I -- as we say in the report,</p> <p>9   we are continuing to look at that question, but we</p> <p>10   haven't come up with anything. So, yes, it is work</p> <p>11   we've done since submitting the report, but there is</p> <p>12   nothing to show for it.</p> <p>13     Q    Just to be clear, you did work after</p> <p>14   submitting your report to try and understand --</p> <p>15     A    Yes, yes.</p> <p>16     Q    Do you know how much work you did?</p> <p>17     A    No, I don't. You know, we probably</p> <p>18   asked one of our guys to do it. They put a few</p> <p>19   hours in, but it is not a big -- it's not a high --</p> <p>20   frankly, it -- it wasn't a high priority -- it was</p> <p>21   not a high priority once the report was in.</p> <p>22     Q    And is that something you are</p> <p>23   continuing to pursue?</p> <p>24     A    Well, I -- I don't know.</p> <p>25     Q    Do you have any plans to continue to</p>

31 (Pages 121 to 124)

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HENRY FARBER

<p style="text-align: right;">125</p> <p>1 pursue that research?</p> <p>2 A No.</p> <p>3 Q Now, with respect to -- now, which of</p> <p>4 the acquired airlines on table one do you understand</p> <p>5 were not flying at the time of the transaction?</p> <p>6 MR. PRESS: You already asked that. He</p> <p>7 said he was going to get back to you.</p> <p>8 MR. TOAL: I -- I think I asked him</p> <p>9 about categorizations which is broader than the</p> <p>10 airlines that were not flying.</p> <p>11 THE WITNESS: What I volunteered to you</p> <p>12 was that I knew that Republic, Links -- Republic did</p> <p>13 -- Links, Midwest, and the first Frontier were not</p> <p>14 flying at the time of their acquisition. But I --</p> <p>15 beyond that, I don't know about the rest of the</p> <p>16 list, and -- and I can -- I will -- will send you</p> <p>17 something if you -- if you -- if you want, we can</p> <p>18 send you something like that.</p> <p>19 BY MR. TOAL:</p> <p>20 Q Do you know anything about the</p> <p>21 circumstances that led to Frontier ceasing</p> <p>22 operation?</p> <p>23 A Which Frontier? The first Frontier?</p> <p>24 Q The first Frontier that you list with</p> <p>25 the Continental -- the Continental transaction.</p>	<p style="text-align: right;">127</p> <p>1 Q Okay. And isn't it true that TWA was</p> <p>2 flying at the time of the transaction only because</p> <p>3 of injections of money by American Airlines?</p> <p>4 A I don't know that.</p> <p>5 Q Did you make any efforts to determine</p> <p>6 whether that was true?</p> <p>7 A No.</p> <p>8 Q Why not?</p> <p>9 A Just didn't.</p> <p>10 Q Now, take a look at paragraph 51 of</p> <p>11 your report. Do you see the last sentence here?</p> <p>12 Last sentence here says, Links and Midwest</p> <p>13 were so weak financially at the time of their</p> <p>14 acquisitions that each was only flying because of</p> <p>15 financial assistance from Republic. Do you see</p> <p>16 that?</p> <p>17 A Yes. It just shows -- shows you the</p> <p>18 danger of -- of trying from memory to tell you</p> <p>19 something about table one.</p> <p>20 Q Does that refresh your recollection</p> <p>21 that Midwest was flying at the time of the</p> <p>22 transaction?</p> <p>23 A To -- yes.</p> <p>24 Q And to the extent that TWA was -- was</p> <p>25 flying at the time of the transaction only because</p>
<p style="text-align: right;">126</p> <p>1 A Not -- not as I sit here right now.</p> <p>2 Q Do you know whether Frontier had the</p> <p>3 ability to obtain financing that would have allowed</p> <p>4 it to continue flying?</p> <p>5 A I'm sorry. Say that again.</p> <p>6 Q Do you know whether Frontier had the</p> <p>7 ability to obtain financing that would have allowed</p> <p>8 it to continue to fly?</p> <p>9 A No, I don't.</p> <p>10 Q So take a look at paragraph 49 of your</p> <p>11 report. You say in the second sentence here, you</p> <p>12 say, for example, prior to its acquisition by</p> <p>13 Republic, Links was bankrupt and only flying because</p> <p>14 of injections of money by Republic, and as far as</p> <p>15 the arbitrator could determine, had no prospect of</p> <p>16 ever being profitable. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q So does that refresh your recollection</p> <p>19 that at the time of the acquisition, Links was, in</p> <p>20 fact, flying?</p> <p>21 A I would have to -- I would have to</p> <p>22 double check that. I -- I was quite sure they</p> <p>23 weren't flying. So either the sentence is wrong or</p> <p>24 my recollection earlier is wrong. So I want to</p> <p>25 double check that.</p>	<p style="text-align: right;">128</p> <p>1 of financial assistance from American Airlines, and</p> <p>2 in that respect, TWA would be comparable to Links</p> <p>3 and Midwest; correct?</p> <p>4 A In that particular respect, yes.</p> <p>5 MR. PRESS: It is 12:30.</p> <p>6 MR. TOAL: You want to take a break?</p> <p>7 MR. PRESS: Yes, unless you are close.</p> <p>8 MR. TOAL: It -- it is probably a good</p> <p>9 time to take a break.</p> <p>10 VIDEO SPECIALIST: The time is now</p> <p>11 12:29 and we are going off the video record.</p> <p>12 (Luncheon recess.)</p> <p>13 VIDEO SPECIALIST: The time is now 1:37</p> <p>14 and we are back on the video record.</p> <p>15 BY MR. TOAL:</p> <p>16 Q Professor Farber, during the break you</p> <p>17 indicated you had a clarification you wanted to make</p> <p>18 concerning table one; is that correct?</p> <p>19 A Yes, I did. At one point, I -- when</p> <p>20 you asked me do I know which -- which of the</p> <p>21 acquired airlines in table one were not flying, I</p> <p>22 indicated that Midwest and Links were not flying.</p> <p>23 And I did some checking over lunch, and what I</p> <p>24 discovered was I had misspoken. The text is</p> <p>25 accurate on this. They were both flying, but they</p>

32 (Pages 125 to 128)

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HENRY FARBER

<p style="text-align: right;">129</p> <p>1 were both flying very diminished fleets and 2 schedules, just a fraction of what they used to fly. 3 Q And how did you do that checking? 4 A I -- I -- I checked with two of the 5 people back at the office, and they looked it up for 6 me. 7 And this is -- and this is evident on a 8 careful reading of the arbitration reports. 9 Q And Professor Farber, you indicated 10 that you are going to attempt to find out how the 11 other acquired airlines were categorized that appear 12 on table one. 13 A Yes. 14 Q Were you able to do that over the lunch 15 break? 16 A I -- I don't -- I don't have a list 17 ready for that yet, no. But I can get it to you if 18 you would like. 19 Q Okay. Professor Farber, what testing 20 did you do, if any, to determine whether the 21 methodology used here enables you to predict the 22 results of seniority integrations? 23 A I didn't do any testing. 24 Q In your list of comparable 25 transactions, transactions you considered comparable</p>	<p style="text-align: right;">131</p> <p>1 Q And do you have an understanding as to 2 whether the rules and laws that govern seniority 3 integration in Canada are comparable to the rules 4 and laws that govern seniority integration in the 5 United States? 6 A Well, the legal framework governing 7 labor unions in Canada is different from the United 8 States. It is more -- much less nationally based 9 and more provincially based than the US. But, 10 again, when I read the report, both of them, there 11 are two -- there are two for that case. It is sort 12 of strange. Again, they -- the -- the -- the -- the 13 text reads just like an American arbitration report. 14 They are considering the same factors. They are 15 considering the health of the airlines, value broad, 16 career expectations, et cetera. So, again, I 17 decided to go ahead with them. 18 Q And did you do anything other than 19 reading the arbitration decision in that -- 20 concerning that transaction to understand whether 21 the rules governing seniority integration in Canada 22 differ from the rules governing seniority 23 integration in the United States? 24 A I'm not sure what you mean by rules. 25 Whose rules?</p>
<p style="text-align: right;">130</p> <p>1 to American Airlines and TWA, you include two 2 transactions involving cargo airlines; correct? 3 A Yes. 4 Q And did you do any research to try and 5 evaluate whether there are any relevant differences 6 between cargo airlines and passenger airlines? 7 A When I looked at those initially, I 8 said -- I wondered, and then I looked at the 9 descriptions in the arbitrator's reports, and the 10 arbitrators appeared to do -- use similar sets of 11 criteria when -- when rendering a decision. So 12 ultimately I just went ahead with that. 13 Q And other than reviewing the 14 arbitration decisions, did you do any other analysis 15 to try and assess whether cargo airlines had 16 relevant differences from passenger airlines? 17 A No. 18 Q And you also include in your list of 19 transactions that you considered comparable, 20 transactions between two Canadian airlines; correct? 21 A A transaction between two Canadian 22 airlines. There were two Canadian? 23 Q There was one transaction between -- 24 A One transaction between two Canadians 25 airlines, yes.</p>	<p style="text-align: right;">132</p> <p>1 Q Any relevant laws, regulations, 2 standards that are used by arbitrators. 3 A Again, I'm reading -- I determined that 4 there appeared that the standards used were the same 5 as in the US, de facto. 6 Q I understand, but what you read was the 7 arbitration decision itself. 8 A Correct. 9 Q And my question is whether, other than 10 reading that arbitration decision, you made any 11 other efforts to assess whether there were 12 differences between Canadian standards and US 13 standards regarding seniority integration? 14 <b>MR. PRESS: He answered what standards.</b> 15 <b>THE WITNESS: It is not clear to me</b> 16 <b>what standards you are talking about. These are</b> 17 <b>private transactions, so that in the US, for</b> 18 <b>example, there is -- there is no external standard</b> 19 <b>governing seniority interactions. These are</b> 20 <b>essentially private -- private negotiations or -- or</b> 21 <b>private arbitrations. At least -- yes. Well, at</b> 22 <b>least until -- I mean, let me -- let me amend that.</b> 23 <b>I understand in the US there is a regulatory</b> 24 <b>framework, and at least currently the McCaskill bond</b> 25 <b>amendment codifies into law that there ought to be</b></p>

33 (Pages 129 to 132)

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<p style="text-align: right;">133</p> <p>1 arbitration seniority integrations based on the</p> <p>2 Allegheny/Mohawk, provisions of the CAB decision in</p> <p>3 Allegheny/Mohawk, sections 3 and 13, if I recall</p> <p>4 correctly.</p> <p>5 <b>BY MR. TOAL:</b></p> <p>6 <b>Q</b> And other than reading this arbitration</p> <p>7 decision, did you do anything to assess whether</p> <p>8 arbitrators deciding seniority integration issues</p> <p>9 between Canadian airlines use the same standards as</p> <p>10 arbitrators assessing seniority integration in the</p> <p>11 United States?</p> <p>12 <b>A</b> No.</p> <p>13 <b>Q</b> Now, in your report, you develop a list</p> <p>14 of seven transactions that you view as comparable</p> <p>15 and to determine your best estimate of the</p> <p>16 proportional difference in mean rank that you think</p> <p>17 would have existed in the American/TWA transaction</p> <p>18 absent a breach of the duty of fair representation,</p> <p>19 and you take the average of those seven</p> <p>20 transactions; correct?</p> <p>21 <b>A</b> That's correct.</p> <p>22 <b>Q</b> And so are you assuming for purposes of</p> <p>23 your analysis that in the absence of a breach of the</p> <p>24 duty of fair representation by ALPA, that the</p> <p>25 proportional difference in mean rank for the</p>	<p style="text-align: right;">135</p> <p>1 <b>Q</b> And other than those two factors, you</p> <p>2 didn't take any other factor into consideration in</p> <p>3 assessing whether anything other than a breach of</p> <p>4 the duty of fair representation could have led to a</p> <p>5 departure from the average of your comparables;</p> <p>6 correct?</p> <p>7 <b>A</b> That's correct.</p> <p>8 <b>Q</b> Yesterday you testified about why you</p> <p>9 used a bottom staple instead of a top staple or both</p> <p>10 a bottom and a top staple; correct?</p> <p>11 <b>A</b> Yes.</p> <p>12 <b>Q</b> Now, you testified yesterday, and in</p> <p>13 your report you say that you thought that using a</p> <p>14 bottom staple was more conservative in the sense</p> <p>15 that it produced lower damages; correct?</p> <p>16 <b>A</b> Correct.</p> <p>17 <b>Q</b> Can you explain why you think the use</p> <p>18 of a bottom staple lowers the amount of damages?</p> <p>19 <b>A</b> Yes. It's -- it's because -- it is</p> <p>20 quite likely that an awful lot of pilots -- well,</p> <p>21 there -- there would be -- it is more likely to be,</p> <p>22 it was felt, furloughs. Furloughs necessarily</p> <p>23 happen at the bottom of the list. And as a</p> <p>24 result -- well, let's -- if you have a top staple,</p> <p>25 you would have TWA and American pilots interspersed</p>
<p style="text-align: right;">134</p> <p>1 seniority integration list that was developed with</p> <p>2 respect to that transaction would not have been</p> <p>3 lower than the average of those comparables, which</p> <p>4 is minus .15?</p> <p>5 <b>A</b> Without saying that it's my -- my --</p> <p>6 that's my best estimate of -- of what would have</p> <p>7 happened. I'm -- I'm not making a categorical</p> <p>8 statement that it would not have been lower or that</p> <p>9 it would not have been higher.</p> <p>10 <b>Q</b> Do you acknowledge that there were</p> <p>11 factors other than a breach of a duty of fair</p> <p>12 representation by a union that could affect what the</p> <p>13 proportional difference in mean rank was for any</p> <p>14 given transaction?</p> <p>15 <b>A</b> Yes.</p> <p>16 <b>Q</b> And of the other factors, the ones that</p> <p>17 you took into consideration in developing your</p> <p>18 categories is the three groupings you made for the</p> <p>19 financial condition of the acquired airline;</p> <p>20 correct?</p> <p>21 <b>A</b> Yes.</p> <p>22 <b>Q</b> And your view about whether the</p> <p>23 acquired airline brought substantial assets to the</p> <p>24 transaction; correct?</p> <p>25 <b>A</b> That's correct.</p>	<p style="text-align: right;">136</p> <p>1 at some ratio until you got to a point, all right --</p> <p>2 I'm sorry. Staple. If you had a top staple, you</p> <p>3 would staple American pilots at the top, and then</p> <p>4 what you would do is you would intersperse, and by</p> <p>5 the time you got down to the part at the bottom</p> <p>6 where people were going to be furloughed, you would</p> <p>7 be furloughing both TWA pilots and American pilots.</p> <p>8 Whereas, if you have had a bottom staple and</p> <p>9 you start at the top and intersperse American and</p> <p>10 TWA pilots and staple TWA pilots at the bottom,</p> <p>11 what's going to happen is your furloughs, at least</p> <p>12 at the beginning, are going to fall entirely on the</p> <p>13 TWA pilots. So, therefore, their losses would be</p> <p>14 higher. And it was felt that would yield a low --</p> <p>15 you know, since it is an arbitrary choice, we chose</p> <p>16 to do the conservative thing and -- and make the</p> <p>17 choice that would yield the lower damage number.</p> <p>18 <b>Q</b> I agree with everything you said except</p> <p>19 for the conclusion that you stated, which is, if you</p> <p>20 have a bottom staple, all the pilots who are</p> <p>21 furloughed up to the point of the staple are going</p> <p>22 to be TWA pilots; correct?</p> <p>23 <b>A</b> After adjusting for -- yeah. I'm not</p> <p>24 considering in this -- in this explanation,</p> <p>25 equipment or status.</p>

34 (Pages 133 to 136)

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HENRY FARBER

<p style="text-align: right;">137</p> <p>1 Q Right. So using a bottom staple is</p> <p>2 going to increase the number of TWA pilots that you</p> <p>3 are saying would have been furloughed in the absence</p> <p>4 of a breach; correct?</p> <p>5 A Let me -- let me back up.</p> <p>6 No, that's right. Exactly.</p> <p>7 Q Okay. So if you are increasing the</p> <p>8 number of TWA pilots who would have been furloughed</p> <p>9 in your but-for world, are you increasing the</p> <p>10 damages for those pilots?</p> <p>11 A No. I'm sorry. Because in the but-for</p> <p>12 world, I'm making -- I -- I didn't mean -- what I</p> <p>13 meant to say is the expected earnings of the TWA</p> <p>14 pilots would be lower with the bottom staple. In</p> <p>15 the but-for world, which would make the damages</p> <p>16 smaller because the damages are the difference</p> <p>17 between what the TWA pilots would have earned in the</p> <p>18 but-for world and what they actually earned. So if</p> <p>19 I make what they would have earned in the but-for</p> <p>20 world smaller, then the loss from that number is</p> <p>21 going to be smaller. Maybe I'm -- I'm not saying it</p> <p>22 as eloquently as I might like.</p> <p>23 Q If you had used a top staple, then you</p> <p>24 are assuming that more of the furloughs would have</p> <p>25 gone to American Airline pilots; correct?</p>	<p style="text-align: right;">139</p> <p>1 multiple seniority integration lists; is that</p> <p>2 correct?</p> <p>3 A Did you say I said that?</p> <p>4 Q I thought you did, but correct me if</p> <p>5 I'm wrong. Maybe you were talking about another</p> <p>6 transaction.</p> <p>7 A I don't, I don't remember.</p> <p>8 Q Okay. There are -- are you aware that</p> <p>9 there were multiple different seniority integration</p> <p>10 lists in the Alaska/Jet America transaction?</p> <p>11 A I think they -- they -- I -- I looked</p> <p>12 at that -- I've -- I've read that report, and it</p> <p>13 must be my best recollection -- I'm saying my</p> <p>14 reasoning is, if there is multiple lists, it must be</p> <p>15 because of status and equipment, or equipment.</p> <p>16 Q There are municipality lists over</p> <p>17 time --</p> <p>18 A Oh, I see.</p> <p>19 Q -- and one succeeded the prior list.</p> <p>20 Do you know which list you used?</p> <p>21 A Not as I sit here, no. We could get</p> <p>22 that information for you, though, if you like.</p> <p>23 Q We would appreciate that.</p> <p>24 <b>THE WITNESS: Why don't we make a note</b></p> <p>25 <b>that we need that?</b></p>
<p style="text-align: right;">138</p> <p>1 A Correct, yeah.</p> <p>2 Q So instead of a TWA pilot who got</p> <p>3 furloughed, some American Airline pilot would have</p> <p>4 gotten furloughed.</p> <p>5 A And that would make TWA pilots'</p> <p>6 earnings higher in the but-for world, which would</p> <p>7 make damages larger. I mean, surely you are going</p> <p>8 to try to have an expert who's going to come in and</p> <p>9 say earnings of the TWA pilots in the but-for world</p> <p>10 was as low as possible. Right? And I'm saying I</p> <p>11 made a choice that made them lower, and that's the</p> <p>12 conservative choice.</p> <p>13 Q Did you run a test to assess whether</p> <p>14 the use of a bottom staple or a top staple yielded</p> <p>15 higher damages?</p> <p>16 A No. I never calculated damages.</p> <p>17 Q Did you ask counsel to arrange for</p> <p>18 Mr. Salamat to run a test to see whether your --</p> <p>19 your views about which staple would produce lower</p> <p>20 damages were accurate?</p> <p>21 A I didn't even know Mr. Salamat existed</p> <p>22 until a couple of days ago, so I didn't ask my</p> <p>23 counsel, ask him to do anything.</p> <p>24 Q I think you mentioned with respect to</p> <p>25 the Alaska/Jet Airlines transaction, that there were</p>	<p style="text-align: right;">140</p> <p>1 <b>BY MR. TOAL:</b></p> <p>2 Q Now, you -- in determining your upper</p> <p>3 and lower bounds --</p> <p>4 A Yeah.</p> <p>5 Q -- you took your set of seven</p> <p>6 comparable transactions; correct?</p> <p>7 A Yes.</p> <p>8 Q And then you eliminated the top</p> <p>9 transaction and the bottom transaction --</p> <p>10 A Correct.</p> <p>11 Q -- correct? Now, if you were trying to</p> <p>12 determine what the upper and lower bounds were, why</p> <p>13 wouldn't you include the top and bottom transactions</p> <p>14 for your list of comparables?</p> <p>15 A It's -- it's often the case in</p> <p>16 statistics that the extreme values in a distribution</p> <p>17 are unusual in some way that we haven't measured.</p> <p>18 And, I mean, I -- there is -- there are several ways</p> <p>19 I can approach the answer to this question. One is</p> <p>20 that, in fact, in some statistical analyses what you</p> <p>21 do is it was called trim outliers. You remove them</p> <p>22 from the analysis because you don't want your</p> <p>23 outliers, the extreme values to have undue weight in</p> <p>24 your analysis. So effectively what we are saying</p> <p>25 is, for example, if I would have used Flying</p>

35 (Pages 137 to 140)

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HENRY FARBER

<p style="text-align: right;">141</p> <p>1 Tigers/Seaboard, which is our highest ranked 2 comparable, the upper bound on the damages would 3 have been -- the upper bound on the list would have 4 been much, much, much more favorable to -- to -- to 5 TWA. And Flying Tigers/Seaboard, you know, in that 6 regard, was an usual -- you know, it's -- it's 7 unusually favorable to the acquired airline, and we 8 chose not to have it be that extreme. At the same 9 time, Alaska/Jet America was, you know, not quite as 10 far out in -- in -- in -- in -- in the realm as -- 11 as Republic -- I mean, Flying Tigers/Seaboard was, 12 but, also, we felt that removing the extreme values 13 just reduces the -- the -- the effect that extreme 14 observations can have. And what we are doing is 15 trying to find something that's sort of unusual on 16 one side and then unusual on the other side, but not 17 so unusual as to be extreme. And the way we chose 18 to do that was simply to focus on the second and the 19 sixth rather than the first and the seventh. 20 Q Well, what you describe then as upper 21 and lower bounds, and presumably your -- this is 22 your estimate of upper and lower bounds for 23 transactions involving acquired carriers in the 24 relevant grouping -- 25 A Yes.</p>	<p style="text-align: right;">143</p> <p>1 come up with the means, the commonly accepted 2 measure, what they call central tendency, but we 3 understand that, you know, things could have been a 4 little different one way or the other, or even 5 reasonably different one way or the other. And so 6 we put our bounds on. The bounds are -- the precise 7 value of the bounds are subjective, and -- but what 8 we chose to do, to put some meat on it and some 9 context on it was to say, let's take a value that's 10 not the most extreme that we saw, but one that's 11 quite fairly extreme and -- and use that. Not 12 fairly extreme but, you know. 13 So, you know, going on the upper bound, you 14 know, surely, you know, I'm -- I'm trying to 15 remember what the number was. If -- if you showed 16 me yesterday morning the damages that Salamat had 17 calculated based on my upper bound and lower bound, 18 and, for example, on the upper bound, his upper 19 bound damage estimate was, was it 1.3 billion or 20 1.5 billion? 21 Q It was about 1.5 billion. 22 A Yeah, 1.5 billion. If I would have 23 used Flying Tigers/Seaboard at plus .065, you would 24 -- you would have to add digits to that probably to 25 get the damages. I mean, it would be much, much</p>
<p style="text-align: right;">142</p> <p>1 Q -- in the absence of a breach of the 2 duty of fair representation; correct? 3 A That's correct. 4 Q And if you were truly trying to 5 establish an upper and a lower bound, you would -- 6 you would use the ends of the extreme; correct? 7 A No. I -- what -- what I mean is an 8 upper bound on what would -- we could reasonably 9 expect in another case, you know, if you now gave me 10 airline A and airline B that fit our criteria and -- 11 and what's the most I would reasonably expect, it is 12 true that in some state of the world I can really 13 expect the full extreme value. It could even be 14 higher than that. What I was trying to do is what 15 one might reasonably expect, given what's happened. 16 So there's -- what's happened is, we have a range 17 that we've seen. The extremes of a range in any 18 reasonable distribution, I don't know if you are 19 familiar with a bell-shaped curve. 20 Q I've seen some. 21 A Yeah, right. So the normal 22 distribution. The extreme values are fairly 23 unlikely, quite -- in general, quite unlikely. As 24 you move toward the middle, things become somewhat 25 more likely. So what we want to say is, look, we've</p>	<p style="text-align: right;">144</p> <p>1 larger. 2 Q I agree. 3 A And as a result, you know -- so there 4 is something about Flying Tigers/Seaboard that was 5 unusual. I don't rule -- I never rule out an 6 observation in calculating a mean simply because 7 it's extreme. I mean, I don't want to do it just 8 because -- based on what it came out to be. That 9 would be calculating the statistic after -- you 10 know, choosing the sample after you've done 11 calculations. You don't want to do that. But we 12 want to -- this idea of symmetric trimming, dropping 13 the lowest, dropping the highest, is, you know, is 14 used, and we thought it was a reasonable thing to 15 do. 16 Q Well, but you didn't do -- with respect 17 to seniority integrations that fall within this 18 category that you developed of airlines that are 19 flying and not expected to stop flying imminently 20 but aren't healthy -- 21 A Yeah. 22 Q -- you didn't do any probability 23 distribution for the proportional difference in mean 24 ranks, did you? 25 A No. I could, but, no, I haven't. The</p>

36 (Pages 141 to 144)

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HENRY FARBER

<p style="text-align: right;">145</p> <p>1 sample is very small. That's why I didn't do it.</p> <p>2 Q And you would acknowledge that in the</p> <p>3 absence of any breach of a duty of fair</p> <p>4 representation, that you can have transactions in</p> <p>5 this category where there is a proportional</p> <p>6 difference in mean rank that is below what you</p> <p>7 establish as your lower bound; correct?</p> <p>8 A I -- I observed one. It wasn't -- it</p> <p>9 wasn't meant to be a lower bound on what anyone</p> <p>10 could ever see. It is a lower bound on my estimate</p> <p>11 of what might happen.</p> <p>12 Q And you can't say as you sit here</p> <p>13 today, what the likelihood of a transaction in this</p> <p>14 category would have as a proportional difference in</p> <p>15 mean ranks between your upper and lower bounds;</p> <p>16 correct?</p> <p>17 A That's correct.</p> <p>18 Q And you can't say what the probability</p> <p>19 is that you would get a -- for a transaction where</p> <p>20 there is no breach of the duty of fair</p> <p>21 representation in this category, can't say what the</p> <p>22 likelihood is that the proportional difference in</p> <p>23 mean rank would fall below the lower bound; correct?</p> <p>24 A Correct.</p> <p>25 Q Professor, have you -- have you</p>	<p style="text-align: right;">147</p> <p>1 rough order of magnitude?</p> <p>2 A Yeah. I would say probably somewhere</p> <p>3 between 12 and 30 times.</p> <p>4 Q 12 and 30?</p> <p>5 A Yeah.</p> <p>6 Q How many times have you been deposed</p> <p>7 previously?</p> <p>8 A I don't -- I don't know. Somewhere</p> <p>9 probably between six and 12 times.</p> <p>10 Q And each as an expert witness?</p> <p>11 A Yes.</p> <p>12 Q How many times have you testified in</p> <p>13 court as an expert witness?</p> <p>14 A I -- again, I don't -- I should keep a</p> <p>15 diary or something. Somewhere between four and</p> <p>16 eight times.</p> <p>17 Q Have you ever had your opinions</p> <p>18 excluded?</p> <p>19 A No.</p> <p>20 Q Have you ever been a subject of a</p> <p>21 Daubert challenge?</p> <p>22 A No.</p> <p>23 Q Do you know what a Daubert challenge</p> <p>24 is?</p> <p>25 A Yes.</p>
<p style="text-align: right;">146</p> <p>1 testified as an expert witness before?</p> <p>2 A Yes.</p> <p>3 Q In what areas?</p> <p>4 A In labor discrimination cases. My --</p> <p>5 my testimony, are you -- are you talking about at</p> <p>6 trial?</p> <p>7 Q All right. Let's start with cases in</p> <p>8 which you've been retained as an expert witness.</p> <p>9 A Discrimination cases both in terms of</p> <p>10 hiring and pay with regard to age, sex and race.</p> <p>11 Antitrust cases in -- in several areas. And some</p> <p>12 immigration cases. That's most of it that I can</p> <p>13 recall right now.</p> <p>14 Q Any others that you can recall right</p> <p>15 now?</p> <p>16 A Any other areas?</p> <p>17 Q Any other areas.</p> <p>18 A No. I would say antitrust --</p> <p>19 discrimination, antitrust, immigration. As I sit</p> <p>20 here, that -- that covers what I can remember right</p> <p>21 now.</p> <p>22 Q And how many times have you submitted a</p> <p>23 written expert report?</p> <p>24 A I -- I don't know the number.</p> <p>25 Q And can you give me an estimate on a</p>	<p style="text-align: right;">148</p> <p>1 Q You mentioned that you have done work</p> <p>2 in labor discrimination; correct?</p> <p>3 A Yes.</p> <p>4 Q Have you ever used a regression</p> <p>5 analysis to try and identify whether discrimination</p> <p>6 is the most likely cause of an observed disparity</p> <p>7 between men and women or any other category?</p> <p>8 A I -- I use regression analysis but I --</p> <p>9 in discrimination cases, but I wouldn't character --</p> <p>10 quite characterize the reason for using it the way</p> <p>11 you did.</p> <p>12 Q And how would you characterize the</p> <p>13 reason for using a regression analysis?</p> <p>14 A Basically to analyze the -- what the</p> <p>15 difference in pay is after accounting for -- for a</p> <p>16 variation and other characteristics.</p> <p>17 Q Did you consider using a regression</p> <p>18 analysis in this case?</p> <p>19 A No.</p> <p>20 Q Why not?</p> <p>21 A Micronumerosity. Again, my sample is</p> <p>22 just too small to support multi-variant analysis of</p> <p>23 that type.</p> <p>24 Q And in any other case that you've</p> <p>25 worked on as an expert witness, have you ever used a</p>

37 (Pages 145 to 148)

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HENRY FARBER

<p style="text-align: right;">149</p> <p>1 proportionate difference in means as your -- as your 2 metric?</p> <p>3 A Yes.</p> <p>4 Q Which cases?</p> <p>5 A In many cases -- in -- in -- in -- in 6 the paid discrimination cases, particularly, well, 7 what I've done is I looked at pay differences as a 8 function of characteristics in the workers 9 accounting for differences in job performed, in age, 10 in experience, time with the company, things like 11 that.</p> <p>12 Q And why did you take those 13 characteristics into account such as job 14 performance, age, experience?</p> <p>15 A I didn't say job performance.</p> <p>16 Q You did say job performance.</p> <p>17 A I meant job assignment.</p> <p>18 Q Job performed?</p> <p>19 A The -- the job performed, yes. I said 20 job performed.</p> <p>21 Q Okay.</p> <p>22 A That's job assignment, not job 23 performance.</p> <p>24 Q Okay. So job performed, age, time with 25 the company. Why -- why did you attempt to take</p>	<p style="text-align: right;">151</p> <p>1 Q Did you ever seek information 2 concerning the TWA/Ozark case?</p> <p>3 A No. Not specifically. If it was one 4 of the mergers we were to have looked at, presumably 5 we looked. But I don't -- no, I don't -- I didn't 6 look for that.</p> <p>7 MR. TOAL: And let's go off the record.</p> <p>8 VIDEO SPECIALIST: The time is now 2:07 9 and we are going off the video record. 10 (Brief recess.) 11 VIDEO SPECIALIST: The time is now 2:14 12 and we are back on the video record.</p> <p>13 MR. TOAL: Thank you, Professor Farber. 14 I pass the witness.</p> <p>15 MR. PRESS: No questions.</p> <p>16 VIDEO SPECIALIST: The time is now 2:14 17 and this concludes the videotaped deposition. 18 The deposition concluded at 2:14 p.m. 19 ***** 20 21 22 23 24 25</p>
<p style="text-align: right;">150</p> <p>1 those characteristics into account?</p> <p>2 A Well, there is a large body of 3 literature in labor economics which, in particular, 4 I mentioned -- did I mention education? Education 5 is variable number one in these analyses. We -- we 6 have a model called the human capital model which 7 links pay to worker's characteristics, and then -- 8 and links then when people will be paid to the skill 9 they bring to the job measured by education, how 10 long they've been in the labor market, how long 11 they've worked for the company. There is some 12 controversy about how finely one should control for 13 the job performed, but it is something we often look 14 at in these analyses.</p> <p>15 Q And did you analyze those factors 16 because those are nondiscriminatory characteristics 17 that can account for pay differences?</p> <p>18 A Yes.</p> <p>19 Q Were you aware there was a transaction 20 between TWA and Ozark Airlines?</p> <p>21 A I think I heard about it but I 22 hadn't -- I don't know anything about it.</p> <p>23 Q Do you have information concerning the 24 seniority integration in the TWA/Ozark case?</p> <p>25 A No. Not that I can recall.</p>	<p style="text-align: right;">152</p> <p style="text-align: center;">CERTIFICATION STATE OF NEW JERSEY SS. COUNTY OF GLOUCESTER</p> <p>I, Jean B. Delaney, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that I reported the deposition in the above-captioned matter; that the said witness was duly sworn by me; that the foregoing is a true and correct transcript of the stenographic notes of testimony taken by me in the above-captioned matter.</p> <p>I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.</p> <p style="text-align: right;">Jean B. Delaney, CSR #XIO1556 Notary Public #2044912 Exp. 6/19/13 Dated: January 24, 2013</p> <p style="text-align: center;">DEGNAN &amp; BATEMAN, INC.</p>

38 (Pages 149 to 152)

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<b>abbreviation</b> 97:24	<b>accurate</b> 17:14	<b>adopt</b> 14:13	37:20,24,24 38:10	101:25 102:16
<b>ability</b> 126:3,7	53:23 74:9 128:25	<b>advantage</b> 11:13	38:11,12,19,22	104:11 105:15,24
<b>able</b> 4:15 9:20 28:4	138:20	<b>advocates</b> 71:9,10	39:2,4,9,13,16,20	111:21,22,24
33:3 55:3,6 59:4	<b>acknowledge</b> 37:17	<b>affect</b> 134:12	39:22,23,24 40:6	112:2,3,4,5,22,24
59:11 73:25 85:5	134:10 145:2	<b>age</b> 146:10 149:9	40:19 42:8,16,21	114:10,13,18
88:25 120:4,13	<b>acquire</b> 11:7 30:15	149:14,24	43:16,18 44:3,5	115:2,15 116:16
123:14 129:14	30:18 75:20	<b>agenda</b> 69:11,20	44:12,17,19 47:2	118:10 121:6,13
<b>abovecaptioned</b>	<b>acquired</b> 16:4,12	71:5	47:13,18,21 48:7	121:19 122:5,9
152:8,12	24:10 25:22 26:14	<b>ago</b> 102:24 115:3,6	49:4,15 50:6,10	125:4,10 127:3
<b>absence</b> 4:14 55:4	26:18 29:1,6	138:22	50:21 51:5,13	128:1,21 129:11
108:21 133:23	31:17 32:17 33:21	<b>agree</b> 36:21 88:2,5	52:6 54:7,8,9,16	130:1,2,6,6,15,16
137:3 142:1 145:3	35:14 39:13,16	95:18,19,20	55:11 56:6,17,17	130:20,22,25
<b>absent</b> 20:23 40:10	40:6,9 41:19 42:5	105:22 116:11	56:19 57:2,23	131:15 133:9
54:10,20 56:7	43:11 48:7 49:4	136:18 144:2	58:9 62:24 63:5	138:25 144:18
58:20,20 70:1	49:15 50:21 51:5	<b>agreed</b> 25:8 71:6	63:10 66:13 67:4	150:20
71:25 73:10 87:17	51:12 52:5 54:16	<b>agreeing</b> 117:23	67:16 87:4 88:11	<b>airport</b> 43:19
97:22 106:10	61:20 62:23 63:4	<b>agreement</b> 25:8	88:15 89:9,20	<b>airtran</b> 122:23
107:24 109:2	88:14 95:25,25	52:14,17 53:14	92:17,18 96:18	123:14,16
133:18	96:17 100:19	76:8 98:24	102:8 105:3,4,5	<b>airways</b> 117:22
<b>absolute</b> 41:9	103:11 113:24	<b>agreements</b> 98:10	113:3,24 114:8,22	<b>al</b> 1:4
<b>absolutely</b> 14:23	114:8 115:23	<b>agrees</b> 3:23 117:6	114:22 115:6,17	<b>alaska</b> 62:21 65:7
28:23 36:23 38:24	116:13 125:4	117:13	115:18,22 134:19	138:25 139:10
39:6 41:13 64:22	128:21 129:11	<b>ahead</b> 78:15 86:19	134:23 137:25	141:9
<b>abstract</b> 24:23	134:19,23 141:7	130:12 131:17	138:3 141:7	<b>alexander</b> 1:15
<b>academic</b> 19:15,20	141:23	<b>air</b> 1:7 62:13 65:14	142:10,10	<b>allegation</b> 106:13
<b>accept</b> 53:8	<b>acquiring</b> 21:3,8,9	96:16	<b>airlines</b> 3:16 4:14	107:2
<b>accepted</b> 12:25	21:13,15,19 92:18	<b>aircraft</b> 5:3,24 6:1	5:11 7:16 9:24	<b>alleged</b> 93:12
14:11 19:9,18	113:24 114:8	6:3,5,9,19 78:5	10:7 11:16,23,25	113:10
104:23 106:4	116:13 117:2	94:17,18 98:11	14:20,21 15:15,19	<b>allegheeny</b> 133:2,3
107:10,22 108:17	118:24	<b>aircrafts</b> 5:25	16:4,11,12,19	<b>allen</b> 1:18 86:15
108:19 109:1,4,6	<b>acquisition</b> 7:8,11	98:24	17:4 19:16 20:18	<b>allowed</b> 26:13
110:17 143:1	90:25 118:4	<b>airline</b> 4:21 10:11	21:9 31:17 33:21	126:3,7
<b>accepting</b> 53:14	125:14 126:12,19	10:21,24 11:9,20	35:14 37:1 40:10	<b>allows</b> 11:8
<b>access</b> 31:5 60:16	<b>acquisitions</b> 56:1	12:8,19,22 13:1,8	41:3,16,17,19	<b>alpa</b> 2:3,6 31:4
<b>acchione</b> 1:21	127:14	13:13,16 14:4,17	42:2,5,11,15 43:5	53:15 73:7 93:13
<b>account</b> 22:22 39:1	<b>act</b> 106:9,11	16:15,17 17:7	43:11,12 44:25	106:16 107:21
39:8 100:24	<b>action</b> 1:2 102:7	18:2,5,7,21,25	46:25 54:6 55:21	133:24
112:10,11 113:13	106:14 152:16,17	19:11,23 20:20,21	55:23 56:4 57:2	<b>alternate</b> 110:3
113:17,20,22	<b>actual</b> 21:6 53:20	20:24 21:3,3,8,11	58:6,8 61:21 62:2	111:25
116:4,17 149:13	<b>ad</b> 121:16	21:15,19,24,25	63:1,3,4,9,21,25	<b>alternative</b> 54:24
150:1,17	<b>add</b> 143:24	22:11,25 23:13	64:6,12,15 66:12	80:4 92:22 93:5
<b>accounted</b> 113:7	<b>addendum</b> 25:7	24:10 25:22 26:19	67:7 68:18 73:19	93:10 111:17
<b>accounting</b> 148:15	<b>additional</b> 91:22	29:1,6 31:13,21	74:6 75:17,19	122:8
149:9	<b>addressed</b> 9:12,15	32:18,21,24 33:1	81:12,20 87:3,9	<b>alternatives</b> 59:5
<b>accounts</b> 85:12	9:17,19	33:2 34:10,12	87:12 88:14 89:25	112:7
<b>accuracy</b> 63:17	<b>adequate</b> 80:3	36:4,7,11,15,20	94:22 97:1,4 98:5	<b>amend</b> 132:22
	<b>adjusting</b> 136:23	37:9,11,12,14,18	98:17 99:7 101:21	<b>amendment</b> 66:21

132:25 <b>america</b> 62:21 139:10 141:9 <b>american</b> 4:14 42:15,23 43:5 44:25 57:2 62:2 66:12 67:7 68:18 71:6,25 73:18 74:6 76:7 81:12 89:24 94:22 98:17 99:7 101:21,25 110:4 122:9 127:3 128:1 130:1 131:13 133:17 135:25 136:3,7,9 137:25 138:3 <b>americans</b> 70:13 <b>americas</b> 2:1 117:22 <b>amount</b> 60:23 135:18 <b>ams</b> 118:5,14,24 <b>analyses</b> 140:20 150:5,14 <b>analysis</b> 5:19 7:21 7:22 8:4 13:16,24 14:1 17:3,6 21:6 22:7 24:7 25:13 25:14,18 26:5 28:3 39:8,18 40:14 42:4 43:1 57:15 59:9 67:25 68:13,24 70:2 72:10 75:25 76:20 77:10,17 78:20 79:11 80:16 82:12 82:15,19,24 83:6 83:9,10,14 84:4 84:21 86:6 89:17 99:1,4 102:4 103:21 104:14 110:24 113:8 118:16 122:4,20 130:14 133:23 140:22,24 148:5,8 148:13,18,22 <b>analysts</b> 35:18,23	<b>analyze</b> 4:17 10:2 19:22 31:8 59:6,8 59:15,19,20,23 60:2,19,23 148:14 150:15 <b>analyzed</b> 31:14 39:9,10 55:17 98:19 <b>analyzing</b> 14:18 60:4 <b>angel</b> 18:18 <b>announced</b> 73:15 74:6,13,14,18 <b>answer</b> 12:14 13:25 14:4 16:21 17:1 18:11,13 22:21 23:2 24:23 27:16 30:10 31:9 46:7 46:14 47:16 49:5 52:8 81:21,22,23 83:24 84:10,14,15 85:11 88:7 102:2 120:20 121:16 123:9 140:19 <b>answered</b> 26:1 50:13 65:9 121:17 132:14 <b>antitrust</b> 71:8 146:11,18,19 <b>anymore</b> 14:21 <b>anyway</b> 11:17 <b>apa</b> 53:1,11 54:2 73:7,14 <b>apas</b> 52:19,24 53:5 53:18,20,24 <b>apparently</b> 5:20 102:11 <b>appear</b> 7:15 48:4 82:25 129:11 <b>appeared</b> 15:17 130:10 132:4 <b>appears</b> 104:7 <b>appreciate</b> 139:23 <b>approach</b> 109:6 140:19 <b>approached</b> 75:17 <b>approaching</b>	107:19 <b>appropriate</b> 14:2 19:18 <b>appropriately</b> 17:3 17:6 <b>approve</b> 67:6,18 71:12 <b>approving</b> 71:15 <b>approximate</b> 76:12 <b>approximately</b> 74:6 78:5 85:23 <b>april</b> 3:10 74:24 75:6 <b>arbitrary</b> 136:15 <b>arbitrated</b> 22:23 25:3 26:23 27:15 <b>arbitration</b> 3:15,18 8:2 11:22 12:10 12:24 16:24 17:17 17:22,24 19:10 20:1 22:8 23:10 23:19 24:9 25:15 40:18 48:16 49:7 49:10 51:2 62:16 91:21 95:1,7,11 95:13,20 96:4,25 97:3 99:11,15 104:2,19 106:25 116:22,23 129:8 130:14 131:13,19 132:7,10 133:1,6 <b>arbitrations</b> 106:19 132:21 <b>arbitrator</b> 17:10 18:1 22:9,15,17 22:24 23:3,17,23 24:1,5,6,9 95:4 102:22 116:12,17 126:15 <b>arbitrators</b> 10:13 10:16,19 17:10 40:23 48:11,13 100:23 101:8 104:3 116:1,4 130:9,10 132:2 133:8,10 <b>archer</b> 1:14	<b>area</b> 41:16 111:6 121:23 <b>areas</b> 29:16 107:13 146:3,11,16,17 <b>arent</b> 86:18 144:20 <b>argues</b> 23:14 <b>arguing</b> 23:12 <b>arguments</b> 24:20 53:11 <b>arrange</b> 138:17 <b>arrangements</b> 55:25 <b>array</b> 11:24 <b>article</b> 3:21 8:21 51:20 117:5,11,14 117:19 <b>articles</b> 26:9 27:1 32:4 51:19 <b>arub</b> 33:14,23 <b>ashenfelter</b> 1:13 <b>ashmore</b> 1:13 33:11 46:16 <b>aside</b> 10:9 116:8 <b>asked</b> 30:25 50:23 63:18 64:23 72:11 81:18 82:16 84:1 84:3 121:17 124:18 125:6,8 128:20 <b>asking</b> 28:5,6 31:20 50:9 72:8 86:17 87:25 88:2,5 96:12 <b>aspect</b> 11:18 <b>aspects</b> 7:23 <b>assess</b> 18:1 25:19 26:18 58:18 74:3 91:5,8 130:15 132:11 133:7 138:13 <b>assessing</b> 60:24 73:4 133:10 135:3 <b>assessment</b> 5:1 <b>asset</b> 76:8 <b>assets</b> 5:7 18:22 19:5 20:12 29:6 58:12 75:20 91:14	118:5,5,10 134:23 <b>assignment</b> 149:17 149:22 <b>assistance</b> 127:15 128:1 <b>association</b> 1:7 <b>assume</b> 6:15 9:14 53:17 86:18 88:1 <b>assumed</b> 93:13 <b>assumes</b> 80:13 84:24 <b>assuming</b> 98:7 133:22 137:24 <b>assumption</b> 21:14 88:3,4 <b>assumptions</b> 55:3,5 <b>astounding</b> 35:2 <b>attain</b> 100:25 <b>attempt</b> 27:19 129:10 149:25 <b>attempting</b> 26:18 <b>attention</b> 66:16 67:2 75:13 97:17 117:18 <b>attorney</b> 152:14,15 <b>attorneys</b> 1:20,23 2:3,6 <b>attributable</b> 114:7 <b>attributing</b> 22:4,5 <b>auction</b> 78:23 <b>available</b> 27:18 30:22 31:2 46:20 79:25 85:16 86:12 105:11 113:16 <b>avenue</b> 2:1,5 <b>average</b> 77:2 85:18 85:20,22 102:18 104:24 105:2,3,4 105:5,17,24 107:5 107:6,8 108:4,5,7 108:15 110:10 119:10,13 133:19 134:3 135:5 <b>avoid</b> 78:24 <b>award</b> 116:23 <b>aware</b> 26:8,20 30:17 43:7,9
---	--	---	---	---

67:25 68:11,22 75:24 76:2,17,18 77:6,9 78:7,17 79:6 80:9,16 82:8 82:12 84:21 86:4 122:15 139:8 150:19 <b>awful</b> 113:21 135:20	107:7 148:14 <b>basis</b> 6:23 40:21 57:25 85:9 104:21 119:6 <b>bateman</b> 2:7 <b>bearing</b> 52:14,16 82:21 83:4 <b>beat</b> 72:18 <b>beginning</b> 117:19 136:12 <b>behavior</b> 109:3 <b>believe</b> 7:7 9:2 25:24,25 30:24 31:14 33:22 63:22 69:6,8 75:9 85:3 85:13,13 88:18 89:8 90:24 116:23 123:4 <b>believed</b> 59:13 <b>bellshaped</b> 142:19 <b>beneficiary</b> 100:12 103:2 <b>benefit</b> 49:10 105:10 <b>benefits</b> 100:24 <b>best</b> 15:16 65:2,4 65:19 93:9 111:12 113:16 133:15 134:6 139:13 <b>better</b> 5:11 9:24 33:2 37:15 38:18 39:16 74:16 93:22 98:10,23 99:5 119:3 <b>beyond</b> 10:15 12:15 26:25,25 57:12 65:10,18 91:19 125:15 <b>bid</b> 119:1 <b>big</b> 107:18 124:19 <b>bigger</b> 98:11,24 <b>bill</b> 3:14 80:25 81:4 81:9,11 85:15 <b>billion</b> 143:19,20 143:21,22 <b>bills</b> 50:1 <b>bit</b> 5:4,5 61:8 107:4	108:13,14 <b>body</b> 94:17,18 150:2 <b>boeing</b> 5:9 9:1,3,4 <b>bond</b> 66:18,21 68:4 68:6,9,11 69:24 132:24 <b>bottom</b> 5:14 37:2 37:10 40:1 41:3 41:16 42:19 63:20 67:3,11,12 88:21 89:5 100:5,6,7 135:9,10,14,18,23 136:5,8,10,20 137:1,14 138:14 140:9,13 <b>boulevard</b> 1:18 <b>bound</b> 92:21 100:1 102:20,20 141:2,3 142:5,8 143:13,17 143:17,18,19 145:7,9,10,23 <b>bounds</b> 140:3,12 141:21,22 143:6,6 143:7 145:15 <b>brady</b> 1:4 <b>breach</b> 93:12 106:17,18 107:2,3 107:24 108:3,21 109:24 110:1 113:11 133:18,23 134:11 135:3 137:4 142:1 145:3 145:20 <b>breached</b> 107:21 <b>break</b> 61:19 128:6 128:9,16 129:15 <b>brief</b> 61:15 151:10 <b>bring</b> 105:8 150:9 <b>broad</b> 55:14,15,22 75:20 131:15 <b>broadest</b> 125:9 <b>broadest</b> 108:11 <b>brought</b> 134:23 <b>bs</b> 36:7 <b>buckets</b> 17:4 <b>burn</b> 76:16,24 77:2	<b>business</b> 19:1 27:2 34:8,9 67:5,17 68:19 69:3 70:1 <b>butfor</b> 93:13,18,19 137:9,11,15,18,19 138:6,9 <b>buying</b> 8:10 <b>buzz</b> 34:13  <b>C</b> <b>cab</b> 133:2 <b>cal</b> 97:24 98:2,6 <b>calculate</b> 27:25 49:1 92:10 109:2 109:14 111:17 <b>calculated</b> 92:25 109:12 138:16 143:17 <b>calculating</b> 144:6,9 <b>calculation</b> 93:4 103:18 104:21 107:15 109:17,18 109:19 110:12 <b>calculations</b> 144:11 <b>call</b> 5:21 7:25 12:1 12:4 14:22 25:13 33:13 50:3,3 55:19 63:24 86:22 106:8,8 108:25 115:11 143:2 <b>called</b> 107:10,11 140:21 150:6 <b>camden</b> 1:2 <b>canada</b> 62:13 65:14 131:3,7,21 <b>canadian</b> 62:13 65:14 130:20,21 130:22 132:12 133:9 <b>canadians</b> 130:24 <b>canceled</b> 6:20 <b>canceling</b> 5:22 44:13 <b>cant</b> 18:13 25:16 33:14 44:1 48:24 53:22 63:17 64:9 65:5,23 80:17	104:15,20 110:3,5 112:17 113:17 145:12,18,21 <b>capital</b> 80:3 150:6 <b>capture</b> 103:25 104:4 <b>capturing</b> 113:4 <b>care</b> 97:14 <b>career</b> 37:12,20,23 38:12,18,19 39:1 40:24 105:9 112:19,23,25 113:5,6 116:9 131:16 <b>careful</b> 129:8 <b>cargo</b> 130:2,6,15 <b>caribou</b> 60:7,19 <b>carl</b> 8:13,13 60:11 122:13,18 <b>carrier</b> 98:8 100:9 100:19,25 101:25 103:11 112:21 117:23 <b>carriers</b> 10:3 116:8 141:23 <b>carry</b> 100:21 <b>carryover</b> 67:3,12 <b>case</b> 4:12,21 7:19 11:13,15 12:11 13:12 16:23 17:12 18:14 22:22 24:14 24:17,18,22 25:15 26:2 27:14 30:9,9 33:10 36:4,6 50:11 52:19 53:13 54:3 57:22 71:7 71:24 74:20 76:14 92:23 93:4,11 102:16 106:15,25 107:4,24 108:12 111:7 115:8 131:11 140:15 142:9 148:18,24 150:24 151:2 <b>cases</b> 8:2 10:19 14:2 26:1 27:8,10 28:3,6,10,16
--	---	--	--	--



39:12 40:18 45:12 95:15 107:1 108:8 110:8,10 116:3 146:4,7,9,11,12 148:9 149:4,5,6 <b>cash</b> 42:3 47:22 57:9 68:17 76:9 76:12,15,24 85:16 85:16,24,25 86:12 <b>categorical</b> 36:17 134:7 <b>categories</b> 29:4,12 30:5,13,24 40:1,7 41:18 42:5,7,10 61:20 65:11 103:10,17,25 104:5,13,15 105:11,15,21 110:18,23 111:10 111:14 112:2 122:6 134:18 <b>categorization</b> 13:22 122:5 123:3 123:12 <b>categorizations</b> 55:14 125:9 <b>categorize</b> 31:13 87:2 122:25 <b>categorized</b> 4:21 17:3 89:20 96:16 102:8 129:11 <b>categorizing</b> 113:2 <b>category</b> 15:25 16:6,19 40:2,2,9 40:15,16 41:1,2 41:19 54:15 55:12 55:13,18,18,19,19 55:20,20,20,21,21 56:3 62:25 63:7 64:4,9,11,17 65:3 65:7 87:9,12 88:23 89:5,7,14 102:13 105:23 106:1 111:25 144:18 145:5,14 145:21 148:7 <b>cause</b> 148:6	<b>cease</b> 10:11,21,25 11:9,20 12:3,8,19 12:23 13:1,8,13 13:16,20 14:5,18 15:1 16:5,15,17 16:20 17:7 18:8 19:12,23 20:23 22:1,11,25 23:13 23:14 24:10 25:22 26:14,19 32:18 36:5 37:4,19,25 38:10,20 39:4 41:4,21 42:21 43:16,18,25 44:4 44:20,24 45:8,20 46:13,20 47:3,14 47:19 48:7 49:11 49:16,18 50:10,18 50:21 51:5,13 52:6,20,25 53:5 58:18,24 59:2,16 59:20,25 60:4,21 60:25 61:5 63:11 73:4,10 77:13,18 77:24 79:12 82:22 83:1,4,17 85:7 86:7 87:14,19,24 89:21 <b>ceased</b> 5:14 10:8,10 20:22 22:1 36:11 36:16 37:6 41:17 87:13 89:9 <b>ceases</b> 36:20 37:5 <b>ceasing</b> 4:22 10:4 20:8 22:3 44:18 70:19 72:2 74:21 80:22 88:9 125:21 <b>central</b> 143:2 <b>ceo</b> 81:11,14,19 84:11 <b>certain</b> 71:9,10 90:14 105:16 109:3 117:3 <b>certainly</b> 31:10,11 102:2,15 115:14 118:20 <b>certainty</b> 36:10	38:6 <b>certified</b> 1:15 152:5 <b>certify</b> 152:7,13 <b>cetera</b> 131:16 <b>challenge</b> 71:8 147:21,23 <b>change</b> 47:16,23 48:1 <b>changes</b> 59:24 <b>chapter</b> 76:14 80:4 <b>character</b> 148:9 <b>characteristics</b> 148:16 149:8,13 150:1,7,16 <b>characterizations</b> 111:18 <b>characterize</b> 148:10,12 <b>chart</b> 88:13 101:16 <b>check</b> 126:22,25 <b>checked</b> 65:14 129:4 <b>checking</b> 128:23 129:3 <b>checkmarks</b> 62:8 <b>cherrypicking</b> 78:9 <b>choice</b> 15:9 136:15 136:17 138:11,12 <b>choosing</b> 144:10 <b>chose</b> 136:15 141:8 141:17 143:8 <b>chosen</b> 108:9,10 <b>christopher</b> 68:9 <b>circumstances</b> 6:19 125:21 <b>cite</b> 7:3 25:9 <b>cited</b> 26:8 <b>cities</b> 50:15 <b>civil</b> 1:2 <b>clarification</b> 128:17 <b>classification</b> 88:20 <b>classified</b> 70:19 <b>classify</b> 88:8 <b>clear</b> 5:6 14:23 15:10 42:20 43:16 43:17 44:8,9 45:3	47:2 48:5 49:14 50:20 70:12 87:23 108:18 124:13 132:15 <b>clearer</b> 114:25 <b>clearly</b> 44:3 64:4 <b>close</b> 7:10 70:17 90:25 128:7 <b>clvs</b> 2:7 <b>codifies</b> 132:25 <b>collection</b> 33:17 <b>collective</b> 25:7 98:10,23 <b>combination</b> 20:24 54:24 <b>combinations</b> 27:18 <b>combined</b> 118:22 119:13 <b>combining</b> 20:19 <b>come</b> 19:20 35:3 38:17 47:23 105:20 107:23 110:7,22 114:9 124:10 138:8 143:1 <b>comes</b> 23:5 24:4 25:7 40:17 <b>coming</b> 85:12 <b>commencing</b> 1:16 <b>comment</b> 72:12 <b>commentators</b> 44:23 <b>comments</b> 53:7 <b>commonly</b> 100:10 107:10 143:1 <b>communication</b> 46:15 <b>company</b> 19:7 75:21 85:18,22 91:11 149:10,25 150:11 <b>comparable</b> 13:19 14:2,20 15:18 39:15 40:3 42:15 63:4 87:3 88:15 104:11 105:15	120:2,10 121:6,13 121:20 128:2 129:24,25 130:19 131:3 133:14 140:6 141:2 <b>comparables</b> 16:3 39:15 62:1,23 63:15 100:1 134:3 135:5 140:14 <b>compare</b> 94:2,6,9 94:12,16,21 106:23 110:11,13 <b>compared</b> 94:3,13 <b>comparison</b> 39:22 65:15,16 102:16 103:7 104:23,24 111:17 <b>compatible</b> 121:3 <b>competition</b> 59:19 66:13 <b>competitive</b> 81:20 <b>complete</b> 78:23 <b>completely</b> 79:15 <b>composition</b> 119:15 <b>compton</b> 3:14 80:25 81:4,9,11 <b>compute</b> 114:12 <b>computer</b> 34:18 <b>concept</b> 15:3,9 <b>concern</b> 8:10 75:21 <b>concerned</b> 116:9 <b>concerning</b> 3:16 32:5,7 51:1,10 52:2 53:18 66:5 66:11 69:25 95:2 95:21 97:1,4 103:10 128:18 131:20 150:23 151:2 <b>concerns</b> 9:13,17 9:19 <b>concluded</b> 82:25 105:14 151:18 <b>concludes</b> 93:21 151:17 <b>concluding</b> 6:8
--	---	--	--	--

<b>conclusion</b> 23:7 47:13 94:1 105:18 121:4 136:19	<b>consisted</b> 12:23 <b>consistent</b> 91:24 100:15 <b>consolidation</b> 66:13 <b>constituencies</b> 71:11 <b>constructed</b> 114:2 <b>constructing</b> 116:5 <b>consumer</b> 66:14 <b>contemporaneous</b> 27:1 34:23 44:23 48:8 49:17 69:1 <b>context</b> 12:10 24:25 50:25 51:9 52:1 53:16 69:22 71:21 78:12 80:18 143:9 <b>continental</b> 3:16 62:20 63:23,25 75:18 92:14 93:23 94:3,7,10,13,17 94:23 95:3,9,25 96:4,8,14,21 97:1 97:4 98:5 125:25 125:25 <b>continue</b> 4:15 38:23 39:3 40:10 50:7 54:10,17,20 55:4,6,23,24 56:4 56:7,9,19,21 57:16 58:1 73:25 96:22 112:5 120:4 120:13 123:19,22 124:25 126:4,8 <b>continued</b> 1:13 4:2 54:22 <b>continues</b> 76:15 <b>continuing</b> 18:17 20:12 32:23 58:12 124:9,23 <b>contrary</b> 54:13 <b>contributing</b> 29:6 <b>contrived</b> 76:7 <b>control</b> 150:12 <b>controversy</b> 150:12 <b>copy</b> 3:13,15,18	80:24 81:3 96:25 97:3 99:11,15 <b>correct</b> 4:23 5:24 8:7 9:1 12:11 14:6,9 16:6 17:18 17:22 18:3,4 21:4 21:8,21,22 23:10 23:15,19 24:11 26:9 27:4 28:19 28:22 29:1,2,7,8 31:18 37:2,15,16 37:21,25 38:7,23 39:5 40:7,8,11 41:6,24 48:9 49:7 49:8,12,13,18 53:24,25 54:3,4 56:12,23 58:25 59:10,11 61:11 62:2 63:5,12 66:6 66:7 70:3,4 71:21 73:11,15 75:11,12 77:25 83:16,22 87:14 88:11,16 92:14,18,19,23 93:7,15,24 99:10 100:2,19,20 101:18 105:18 108:22 109:13 111:4,5,8,10,15 111:16 112:13 113:14,25 114:19 119:16,20,21,24 119:25 120:5 122:9,23 128:3,18 130:2,20 132:8 133:20,21 134:20 134:24,25 135:6,7 135:10,15,16 136:22 137:4,25 138:1 139:2,4 140:6,10,11 142:2 142:3,6 145:7,16 145:17,23,24 148:2 152:10 <b>correctly</b> 133:4 <b>correlated</b> 112:20 <b>cost</b> 60:16	<b>couldnt</b> 24:22 27:21 28:8,17,24 29:5 31:12 103:16 104:10,14 <b>counsel</b> 30:25 31:3 31:4 46:11,15,19 138:17,23 152:14 152:15 <b>count</b> 91:21 <b>counterparty</b> 51:4 51:6,12 52:5,12 <b>county</b> 152:4 <b>couple</b> 41:10 138:22 <b>course</b> 9:21 11:1 15:24 33:9 53:13 85:19 <b>court</b> 1:1 3:11 4:5 51:24 67:6,18 74:25 75:8 147:13 <b>covers</b> 146:20 <b>crappy</b> 53:2 <b>crazy</b> 115:5 <b>create</b> 104:23 105:15 112:1 <b>created</b> 62:25 <b>creating</b> 103:9 <b>creation</b> 110:18 <b>credible</b> 105:20 <b>credit</b> 71:19 91:17 <b>crippled</b> 117:20 <b>criteria</b> 108:11 130:11 142:10 <b>csr</b> 152:20 <b>currently</b> 132:24 <b>curve</b> 142:19 <b>cutting</b> 50:16	<b>danger</b> 4:22 18:5 18:11 60:3 127:18 <b>daniel</b> 2:4 <b>dartmouth</b> 8:16 <b>data</b> 33:17 48:21 105:10 111:18 113:16 <b>database</b> 46:4 <b>date</b> 1:16 7:10 34:15 70:18 72:5 73:6 90:23,25 114:20,23 115:24 116:4,7,12,14,18 <b>dated</b> 66:8 117:12 152:22 <b>dateofhire</b> 119:6 <b>dates</b> 7:9 <b>daubert</b> 147:21,23 <b>david</b> 33:10 46:16 <b>day</b> 22:16 28:2 41:7 50:18 72:19 76:14 76:16,23,24 85:19 85:20,21,23 86:10 88:6,8 <b>days</b> 15:11,12 16:16 34:14 35:3 38:7,15 41:6,9,13 55:8 56:9,16,21 77:3 84:17 85:10 85:19,20 87:1,18 138:22 <b>de</b> 132:5 <b>deal</b> 9:3 60:8,11,14 60:20 64:2,3 84:17 85:10 87:2 <b>dealing</b> 111:3 <b>death</b> 72:19 <b>debt</b> 35:24 <b>debtor</b> 68:16,17 <b>debts</b> 9:20 <b>decades</b> 82:5 <b>decide</b> 58:15 71:7 72:4 <b>decided</b> 5:15 104:10 116:22 131:17 <b>deciding</b> 133:8
---	--	---	---	---

<b>decision</b> 3:10,16,19 7:22 17:9,18,22 17:24 22:8 23:19 23:24 24:1,2 49:7 49:10 74:24 75:7 75:14 95:2,8 96:4 96:25 97:4,17 99:12,15,16 130:11 131:19 132:7,10 133:2,7 <b>decisions</b> 19:11 20:1 91:22 95:12 95:13 130:14 <b>declared</b> 42:24 43:4,8,12 44:5 <b>defendant</b> 1:8 2:3,6 <b>define</b> 40:15 90:16 <b>defined</b> 41:3 42:11 <b>definite</b> 51:17,17 51:18,18,19,20 <b>definitely</b> 36:18 <b>definition</b> 14:12,14 <b>delaney</b> 1:15 152:5 152:20 <b>delaware</b> 3:12 75:1 75:8 <b>delta</b> 25:4,5 26:2,7 26:12,17 27:15 32:5 62:12,12 75:18 88:18 116:20 117:2,7,13 118:24 119:11 <b>demise</b> 101:4,8 <b>denoted</b> 80:5 <b>department</b> 71:7 71:12,15 <b>departure</b> 135:5 <b>dependent</b> 95:14 95:22 <b>depends</b> 119:4 <b>deposed</b> 147:6 <b>deposition</b> 1:13 4:3 81:4 151:17,18 152:8 <b>describe</b> 4:25 7:24 12:22 36:3 42:16 46:3 54:5 81:19	84:15 141:20 <b>described</b> 10:24 12:9 53:18 58:14 63:5 <b>description</b> 8:15 <b>descriptions</b> 11:22 130:9 <b>designed</b> 39:18 <b>despite</b> 59:5 <b>detail</b> 113:18 <b>detailed</b> 31:20 57:3 57:17 58:1 <b>details</b> 16:22 18:14 82:18 96:23 <b>determination</b> 23:18,23 25:20 49:9 61:2 <b>determine</b> 13:18 14:1 17:5 26:13 32:16 47:18 123:14 126:15 127:5 129:20 133:15 140:12 <b>determined</b> 58:16 132:3 <b>determining</b> 83:16 140:2 <b>develop</b> 117:21 133:13 <b>developed</b> 110:19 111:10,14 134:1 144:18 <b>developing</b> 134:17 <b>diary</b> 147:15 <b>didnt</b> 5:5 7:15,20 12:4 27:4,21 31:7 31:8,11,13 32:7 34:17 36:16,17 37:3 40:12,13,25 41:8 43:20 48:4 48:19 49:6 50:11 54:1 58:1,17,22 59:1,8,9 82:25,25 83:11,18,19,20 84:2 103:23,23 121:8,15 127:9 129:23 135:2	137:12 138:21,22 144:16,22 145:1 149:15 151:5 <b>differ</b> 102:17 131:22 <b>difference</b> 28:1 39:1 92:11 93:1,6 93:14,17,19 107:16 109:13 110:12,13 112:11 114:6,11,17 116:16 119:12 133:16,25 134:13 137:16 144:23 145:6,14,22 148:15 149:1 <b>differences</b> 104:25 114:7 116:14 130:5,16 132:12 149:7,9 150:17 <b>different</b> 54:6 62:16 83:9 97:21 107:4 108:14,15 111:18 112:18 122:5 131:7 139:9 143:4,5 <b>differentials</b> 94:21 94:23 <b>differentiates</b> 87:8 <b>difficulty</b> 15:19 18:15 <b>digits</b> 143:24 <b>diminished</b> 129:1 <b>dip</b> 47:25 73:18,22 74:1 <b>direct</b> 34:24 35:8 35:13,18,23 66:16 67:2 75:13 97:16 117:18 <b>directed</b> 35:10 <b>direction</b> 46:18 <b>directly</b> 48:3 113:20 <b>disagree</b> 79:21 <b>disarray</b> 11:24 <b>discourse</b> 19:16,20 <b>discover</b> 52:23	<b>discovered</b> 128:24 <b>discrimination</b> 106:9,24 146:4,9 146:19 148:2,5,9 149:6 <b>discuss</b> 19:16 <b>discussions</b> 48:23 <b>disparity</b> 148:6 <b>dispute</b> 23:10 24:21 <b>dissimilar</b> 105:23 <b>distinction</b> 21:18 39:19 59:12 <b>distinguished</b> 66:23 <b>distress</b> 111:23 <b>distribution</b> 140:16 142:18,22 144:23 <b>district</b> 1:1,1 3:12 75:1,8 <b>divide</b> 16:2,2,7 <b>divided</b> 42:5 <b>dividing</b> 40:4,5 <b>document</b> 25:5 66:2 75:4,10 78:14 80:19 97:8 99:18 117:10 <b>documents</b> 34:25 53:1 86:17 <b>doesnt</b> 14:10 19:20 36:21 37:3 38:25 39:21 <b>doing</b> 11:5 15:24 21:12,12 22:17 23:25 45:12 46:23 59:12 71:13 105:17 106:20 107:10,11,19 108:17 109:4 110:4,23 112:6 113:15 114:14 141:14 <b>domestic</b> 117:21 <b>domiciles</b> 94:6 98:9 98:23 <b>dont</b> 5:5 6:15 7:2 7:14,19,20,24	8:12 12:14 13:3 16:6,21 17:8 18:12,12 19:13 20:9 21:6 22:5 23:2 25:24,25 27:11 28:14,15,24 29:3,19 30:10 31:9,14 33:16 35:4,7 38:1,4,13 41:25,25 42:25 43:22 44:10 45:5 45:6,16 46:7,9,14 46:22,22,23 47:4 47:5,17 48:12 49:5 50:17 51:6 51:14 52:7,16 53:8 55:9 57:3 61:8 64:19,19 65:5,9,18 67:8 69:11,16,18,19,20 70:21 71:15,19,19 72:4 73:23 74:2 76:21,24 77:4,14 85:4 86:10 87:6 88:1,19 90:9,23 92:1,12 95:6 96:6 96:23 98:18 102:1 102:1,6,6 103:17 109:7,9 112:6 113:5,22 115:8 117:4,4 119:15,18 119:21,22 120:22 120:23 123:3,12 124:17,24 125:15 126:9 127:4 129:16,16 139:7,7 139:24 140:22 142:18 144:5,7,11 146:24 147:8,8,14 150:22 151:5,5 <b>doom</b> 32:25 <b>double</b> 126:22,25 <b>dr</b> 103:22 <b>dramatically</b> 87:9 <b>draw</b> 17:13 47:13 <b>draws</b> 23:8 <b>dropped</b> 101:13
--	---	--	---	--

dropping 144:12 144:13 due 85:12,14 duly 4:7 152:9 duty 93:12 106:15 106:16,18 107:3 107:21,25 108:3 108:21 109:24 110:1 113:11 133:18,24 134:11 135:4 142:2 145:3 145:20	36:5 37:18 38:7 53:8 63:10 87:13 89:12 113:24 126:23 eliminate 14:20 eliminated 140:8 eloquently 137:22 emergency 76:7 empirical 107:11 employee 152:15 employees 6:23 19:7 44:14 employers 37:10 employment 7:23 enables 129:21 ended 76:8 ends 142:6 engaged 13:11 enterprise 80:6 entire 78:11 80:19 entirely 23:5 114:21 136:12 entirety 97:13 99:23 entitled 3:22 117:6 117:12 environment 106:21 equal 107:7 115:9 equally 100:10 103:1,1 equipment 14:24 58:11 136:25 139:15,15 equities 97:22 equity 35:19 equivalent 18:7 20:8,15 80:21 87:4 88:10 ergo 121:2 error 20:2 esquire 1:18,21 2:1 2:4 essentially 14:22 15:1,21 31:22 58:7 108:8 132:20 establish 142:5	145:7 established 76:10 78:1 establishing 92:21 estimate 93:10,16 93:18,21 105:13 105:20 107:23 133:15 134:6 141:22 143:19 145:10 146:25 et 1:4 131:16 evaluate 10:10,18 10:20,24 11:8 13:12 24:19 114:4 130:5 evaluating 11:19 12:8,12,18,22 13:1,8 121:5,13 evaluation 24:3 107:11 event 77:5 122:8 evidence 24:3 71:16 80:13 evident 100:9,11 103:1 129:7 exact 8:12 exactly 25:16 35:4 35:12 39:18 44:1 58:3 104:17 108:5 137:6 examine 5:17,17 examined 4:8 30:2 example 5:13 20:18 21:1 47:25 54:6 63:1,5,9 64:12 86:11 87:4 88:11 88:18 111:19,19 114:25 115:1 126:12 132:18 140:25 143:18 examples 21:10 exception 25:4 excluded 28:17,21 147:18 exhibit 62:9 exhibit12 66:3 exhibit13 75:5,6	exhibit14 81:3 exhibit15 96:25 exhibit16 99:15 exhibit17 117:11 existed 133:17 138:21 exp 152:21 expect 22:18 37:13 39:21 49:18 52:14 65:21 142:9,11,13 142:15 expectation 16:15 24:7,9 25:12,13 26:4,6 38:16 39:24 40:22 41:23 48:9 expectations 22:2,4 22:14,20,24 23:3 23:7,22 24:13 37:12,20,24 38:12 38:18,19,21 39:1 40:25 51:3,11 52:4 97:22 105:10 112:19,23,25 113:5,6 116:9 131:16 expected 16:5,17 16:20 17:7 18:21 20:23 22:1,9,25 23:13,14 24:10 25:22 26:14,19 32:18 36:5 37:19 37:24 38:10,20,22 39:2,4,11 40:10 41:4,21 44:24 45:4,19 46:1,12 46:20 47:3,13 48:7 49:11,16 50:7,10,21 51:5 51:13 52:6,20,25 53:5 54:10,16,19 56:7,8,19,20 57:16,25 58:23 59:2,4,16,20,25 60:4,21,25 61:5 63:10,11 69:3 73:4,10 77:13,18	77:24 79:11 82:22 83:3,4,17 86:7 87:13,19 88:7 89:21 137:13 144:19 expenditures 85:18 86:11 expenses 85:23 experience 110:23 111:6 149:10,14 experiencing 101:11,22 experiment 109:22 expert 4:13 13:12 17:19 20:10 32:6 63:8 69:6 120:8 120:18,23 121:3 138:8 146:1,8,23 147:10,13 148:25 expertise 10:20 11:5,8,19 12:7,18 110:22 121:5,12 121:18,22 explain 53:2 135:17 explained 118:19 118:20 explanation 136:24 explanatory 113:13 explicitly 112:18 113:6 exposure 59:23 express 99:12,16 extend 63:19 extensive 30:22 31:16,23 33:20 extent 26:24 37:18 114:5 127:24 external 132:18 extreme 104:18 140:16,23 141:8 141:12,13,17 142:6,13,22 143:10,11,12 144:7 extremes 142:17
--	---	---	--	--

F				
<b>face</b> 53:9 69:13	<b>familiar</b> 18:22,24 19:21 142:19	20:20,21 21:2,7 21:11,15,16,24	<b>fleet</b> 78:25 79:7	63:22 64:1,1,3
<b>faced</b> 79:6	<b>fantastic</b> 21:20	25:10 27:20 28:25	<b>fleets</b> 129:1	73:5,10 77:13,18
<b>facility</b> 33:9	<b>far</b> 5:11 48:6 49:15	30:24 31:17,20	<b>flight</b> 33:4 44:5	77:24 82:22 83:1
<b>fact</b> 32:5 58:10	109:10 126:14	33:20 37:15 39:12	117:23	83:5,17 86:7 87:7
63:18 64:22 95:22	141:10	39:16 40:5,20,21	<b>flights</b> 44:13 50:16	87:7,10,11,13,14
96:16 105:12	<b>farber</b> 1:13 3:3 4:3	41:20 42:6,7,11	119:2	87:19,24 88:6,8,9
112:18 120:24	4:7,10 61:19 66:3	47:1,9,17,22 48:2	<b>flip</b> 70:6	88:21 89:9,21
126:20 140:20	75:5,6 81:2 86:25	48:3 49:3 53:19	<b>flow</b> 47:22 57:9	94:13 98:12,25
<b>facto</b> 132:5	96:24 97:9 99:14	54:8,9,15 69:25	85:25	99:12,16 102:11
<b>factor</b> 83:15,21	99:19 107:19	82:18 84:12 89:24	<b>fly</b> 4:15 32:23	102:22,22 111:23
84:1,3 105:6	117:11 128:16	96:5,9,14,18	39:11 50:15 54:20	112:3,4,5 120:4
116:15 135:2	129:9,19 151:13	102:3,23 103:4,10	54:22 55:11,11,24	120:13,13,21
<b>factors</b> 58:17	<b>farber12</b> 3:8 65:24	105:7 111:23	55:24 56:7,9,20	121:1 125:5,10,14
131:14 134:11,16	<b>farber13</b> 3:10	112:20 113:2	56:21 57:16 72:2	126:4,13,20,23
135:1 150:15	74:24	116:10,24 121:7	80:22 112:6 126:8	127:2,14,21,25
<b>facts</b> 5:20 80:13	<b>farber14</b> 3:13	121:14,20 127:15	129:2	128:21,22,25
84:24 86:18 95:15	80:24	128:1 134:19	<b>flying</b> 3:20 5:2,14	129:1 140:25
95:19	<b>farber15</b> 3:15 97:3	<b>financially</b> 16:11	5:16 10:4,8,10,12	141:5,11 143:23
<b>fading</b> 50:18	<b>farber16</b> 3:18	16:12 64:15	10:25 11:9 12:2,2	144:4,19,19
<b>fail</b> 102:9 103:5	99:11	102:14 112:22,24	12:3,9 14:21	<b>focus</b> 141:18
<b>failed</b> 48:20 49:2	<b>farber17</b> 3:21	120:4,12 127:13	15:10,11,22 16:4	<b>focused</b> 23:21,23
<b>failing</b> 100:9	117:5	152:16	16:5,16,20 17:7	24:13 83:15,21
101:25 102:5,7,10	<b>fat</b> 105:1	<b>financials</b> 83:19	18:8 19:12,23	84:4
<b>failure</b> 117:20	<b>favorable</b> 141:4,7	<b>financing</b> 47:25	20:22,23 22:1,1,3	<b>focusing</b> 22:8 40:1
<b>fair</b> 38:8 78:12	<b>features</b> 103:8	68:18 73:18,22	22:11 23:1,13,15	<b>following</b> 101:10
79:20 89:4 93:12	<b>february</b> 66:9	74:1 126:3,7	24:11 25:22 26:14	114:25 115:1
104:8 106:16,18	<b>federal</b> 99:12,16	<b>find</b> 27:16 32:7	26:19 31:22 32:18	123:16
107:3,21,25 108:3	<b>federalexpress</b>	34:9 35:10,11	32:22 34:12,13	<b>follows</b> 4:8 51:25
108:22 109:25	3:20	36:22 45:19,25	36:5,6,11,15,20	<b>footnote</b> 123:5,13
113:11 115:11	<b>fedex</b> 62:7,11	75:16 82:2 85:5	37:4,5,6,18,19	<b>foregoing</b> 152:10
133:18,24 134:11	<b>feel</b> 11:4	106:20 108:2,9	38:23 39:3,21	<b>foreseeable</b> 41:22
135:4 142:2 145:3	<b>feeling</b> 11:24	124:3 129:10	40:10,23 41:4,5	<b>forever</b> 112:6
145:20	<b>fell</b> 118:14	141:15	41:12,17,21,23	<b>forget</b> 44:19
<b>fairly</b> 34:4 142:22	<b>fellow</b> 8:16	<b>finding</b> 18:18 58:20	42:21 43:16,18,25	<b>form</b> 18:9 51:15
143:11,12	<b>felt</b> 17:14 105:19	76:18 86:14	44:4,18,20,24	72:17,21 80:12
<b>fall</b> 5:21 12:4 14:23	135:22 136:14	<b>finely</b> 150:12	45:4,8,20 46:1,13	84:23
16:6 48:4 50:4	141:12	<b>firm</b> 33:15	46:20 47:3,14,19	<b>formal</b> 109:8
55:18 57:24 58:13	<b>field</b> 12:25 19:10	<b>first</b> 29:4 62:14	48:7 49:11,16,18	<b>formed</b> 26:6
58:14,16 61:3	<b>figure</b> 11:14,14	63:24 65:13 67:12	50:7,10,16,21	<b>former</b> 37:9 123:14
62:24 63:15 65:3	15:17	71:1 100:22	51:5,13 52:6,21	<b>forming</b> 67:22
65:8,12 80:4	<b>files</b> 29:9	115:23 120:3,10	52:25 53:6 54:10	<b>forms</b> 79:14
83:16,22 84:5	<b>filing</b> 80:5 84:9,13	125:13,23,24	54:10,17 55:4,6	<b>forsyth</b> 1:18
136:12 144:17	<b>filings</b> 35:14	141:19	56:5 58:1,6,7,9,10	<b>forth</b> 13:7 20:18
145:23	<b>finances</b> 7:23	<b>fit</b> 11:16 142:10	58:18,24 59:3,17	<b>found</b> 15:14 32:10
<b>falling</b> 63:6	<b>financial</b> 5:18	<b>five</b> 58:4 66:22	59:21,25 60:5,21	35:4 45:7 106:19
<b>falls</b> 64:16	15:14,19 18:15	75:14,14,15	60:25 61:5 62:4,7	<b>four</b> 33:10,11 112:2
			62:11 63:11,11,21	147:15



<b>fraction</b> 129:2 <b>framework</b> 110:20 110:25 131:6 132:24 <b>frankly</b> 11:17 116:6 124:20 <b>free</b> 5:21 12:4 14:22 48:4 50:4 57:24 58:13,14,16 61:3 80:4 83:16 83:22 84:5 <b>friday</b> 15:5,6 <b>front</b> 23:4 69:17 88:19 89:3 122:2 123:2 <b>frontier</b> 63:22,23 63:24,24,25 88:16 89:1 120:3,10 121:1,2 125:13,21 125:23,23,24 126:2,6 <b>fuel</b> 59:24 <b>full</b> 7:20,22 71:1 87:7 89:3 100:7 100:22 142:13 <b>function</b> 149:8 <b>functioning</b> 49:25 <b>fund</b> 76:13 85:12 <b>fundamentally</b> 13:20 <b>funds</b> 77:20 <b>furloughed</b> 90:18 136:6,21 137:3,8 138:3,4 <b>furloughing</b> 44:13 136:7 <b>furloughs</b> 135:22 135:22 136:11 137:24 <b>further</b> 123:5 152:13 <b>future</b> 18:6 37:9 105:25 <hr/> <b>G</b> <hr/> <b>garrison</b> 1:24 <b>gee</b> 103:4 104:6	<b>general</b> 7:1 11:10 33:24 44:15 63:7 121:19 142:23 <b>generally</b> 12:24 21:10 31:2 45:21 101:12 104:23 106:3 111:1 <b>generous</b> 104:19 <b>give</b> 13:25 21:11 24:6 34:1,5 53:4 65:1 78:12 114:24 146:25 <b>given</b> 49:15 78:10 110:23 134:14 142:15 <b>gives</b> 11:19 12:7,17 <b>giving</b> 33:24 64:11 <b>gloom</b> 33:1 <b>gloucester</b> 152:4 <b>go</b> 26:17,24 27:16 27:17 29:14 67:5 67:5,17,17 69:3 70:1 78:15 81:24 82:2 86:19 108:12 109:1 110:3 112:2 121:15 131:17 151:7 <b>goes</b> 78:22 85:8 102:18,19 <b>going</b> 4:4 5:19 8:10 16:25 17:14 18:7 19:16 22:17 23:3 27:2 34:13 36:12 36:22 38:2,5,7 40:22 41:23 44:3 44:4,20 47:18 61:14 67:5,16 71:16 74:8 75:4 75:21 78:8 83:1 84:16 85:5,10 87:1,18,23 99:14 102:9 103:5 105:24 110:9 115:13,14,15,24 125:7 128:11 129:10 136:6,11 136:12,21 137:2	137:21 138:7,8 143:13 151:9 <b>good</b> 4:10,11 20:20 21:10,11,15,20 39:13 53:15 54:8 81:22 84:16 85:25 102:2 104:7 112:23 128:8 <b>gotten</b> 138:4 <b>govern</b> 131:2,4 <b>governing</b> 131:6,21 131:22 132:19 <b>great</b> 65:7 102:23 103:4 <b>greater</b> 104:12,15 <b>green</b> 1:17 <b>gregory</b> 70:8 <b>greiner</b> 1:14 <b>grounded</b> 78:25 79:7 <b>group</b> 16:10,11 39:22 40:3 63:15 65:16,16 102:16 103:7 104:24,24 119:16 123:11 <b>grouping</b> 104:12 141:24 <b>groupings</b> 134:18 <b>groups</b> 16:8,9 97:21 111:17,21 <b>guess</b> 104:8 <b>guidance</b> 33:25 34:1,3,4,5 <b>guys</b> 15:4 40:3 45:16 53:12,14 124:18 <hr/> <b>H</b> <hr/> <b>haddonfield</b> 1:22 <b>hadnt</b> 66:4 67:23 75:10 81:24 107:1 107:2 150:22 <b>half</b> 72:19 <b>halfway</b> 97:18 <b>halpern</b> 103:22 <b>handful</b> 82:3 <b>happen</b> 18:16,23	23:4 38:1,5,7,14 38:15 41:13,14 47:25 135:23 136:11 145:11 <b>happened</b> 8:18 71:14 106:10 107:24 109:2 134:7 142:15,16 <b>happening</b> 69:10 <b>happens</b> 19:6 <b>hard</b> 24:23 27:22 27:23 41:11 44:4 44:11,18,20 48:25 109:20 <b>hasnt</b> 44:5 115:3 <b>havent</b> 75:10 78:10 82:18 111:19 124:10 140:17 144:25 <b>health</b> 37:15 105:7 116:10,24 131:15 <b>healthy</b> 15:25 16:11,13 40:19 41:22 42:2 55:21 64:15 105:3 111:24 144:20 <b>heard</b> 150:21 <b>hearing</b> 3:8 8:16,19 65:24 66:11,17 69:5,18,19,24 <b>hearings</b> 69:10 71:9 <b>heavily</b> 95:14,22 <b>help</b> 14:1 30:25 38:17 47:11,12,18 55:1 103:22 115:1 <b>helped</b> 13:18 <b>hemorrhaging</b> 44:12 <b>henry</b> 1:13 3:3 4:3 4:7 <b>high</b> 124:19,20,21 <b>higher</b> 38:16,16 88:22 98:12,25 107:8 115:15,15 115:17 134:9 136:14 138:6,15	142:14 <b>highest</b> 141:1 144:13 <b>highlight</b> 80:5 <b>highly</b> 112:20 <b>highway</b> 1:22 <b>hire</b> 7:9 114:20,23 115:24 116:4,7,12 116:14,18 <b>hired</b> 7:13,18 49:22 90:22,24 91:6,6,9 114:19 115:3,7 118:13 <b>hires</b> 119:23 <b>hiring</b> 5:4 7:6,21 8:11 61:8 146:10 <b>history</b> 11:25,25 82:20 83:2 <b>honorable</b> 68:8 70:7 <b>hope</b> 65:23 <b>horse</b> 72:19 <b>hostile</b> 96:1 <b>hours</b> 124:19 <b>hub</b> 59:15 <b>human</b> 150:6 <b>hundred</b> 63:17 85:14,24 113:1 <b>hurdle</b> 32:13 <b>hypothetical</b> 20:18 88:15 <b>hypotheticals</b> 74:9 74:10 <hr/> <b>I</b> <hr/> <b>ichan</b> 8:13,14,14 60:11,16 122:7,13 122:18 <b>idea</b> 34:16 42:9 43:24 106:7 144:12 <b>identical</b> 108:6 <b>identification</b> 65:25 75:2 81:1 97:6 99:13 117:8 <b>identified</b> 48:6 61:25 88:25
--	--	--	--	---

<b>identify</b> 32:1 65:2 88:25 148:5	18:3,8 20:23 23:1 25:23 32:18 36:6 37:19 38:3 41:5 44:19,20 45:20 46:1,13,21 47:3 47:14,19 48:8 49:11,16,18 50:22 52:21,25 53:6 54:23 57:17 58:19 58:24 59:3,17,21 59:25 60:5,21,25 61:6 63:11 70:20 72:2 73:5 74:22 77:13,18,24 79:12 83:1,5,17 86:7 87:14,20,24 88:9 102:9 144:19	<b>indicates</b> 66:22 <b>indicating</b> 69:2 122:16 <b>indication</b> 47:2 49:14 96:3 <b>indicator</b> 42:20 43:16,17 44:1,3,8 44:9 45:25 48:6 50:20 <b>indicators</b> 45:3,19 50:6,9 <b>indirectly</b> 113:7,20 <b>individuals</b> 33:19 <b>industry</b> 34:10 66:13 81:20 <b>influence</b> 116:15 <b>information</b> 8:18 25:6,9,17 26:3,5 27:9,19,22,23,24 28:5,7,8,17,25 29:4,5,12,16 30:6 30:12,15,17,19,22 30:23,25 31:4,6 31:12,17,20,21 32:2,9,16 33:20 45:10 46:12,19,25 47:7,8,9,17 48:3 48:25 49:3 64:18 64:21 65:20,22 77:6,9,22 78:18 80:9 82:8,11 86:9 92:5,6,9 116:24 124:2 139:22 150:23 151:1 <b>infusion</b> 42:3 68:17 73:18 80:3 <b>initially</b> 130:7 <b>injections</b> 126:14 127:3 <b>inquire</b> 29:15 <b>insight</b> 53:4 <b>insist</b> 40:1 <b>instance</b> 113:23 <b>instilled</b> 28:3 <b>instructed</b> 27:17 33:5 45:16 <b>integrated</b> 118:18	119:3 <b>integration</b> 22:23 24:15 25:1,21 51:1,10 52:3,15 52:17 92:22 95:3 95:21 108:21 111:3 131:3,4,21 131:23 132:13 133:8,10 134:1 139:1,9 150:24 <b>integrations</b> 95:14 129:22 133:1 144:17 <b>interactions</b> 132:19 <b>interest</b> 8:13 <b>interested</b> 5:7 8:7 8:10 152:17 <b>interesting</b> 63:16 <b>international</b> 1:7 3:17 62:20 92:14 92:17 93:24 94:24 95:2,8 97:2,5 98:11,25 117:24 118:25 <b>interpreting</b> 20:11 <b>intersperse</b> 136:4,9 <b>interspersed</b> 135:25 <b>intervention</b> 70:13 <b>investigate</b> 44:22 <b>involved</b> 33:10,17 43:12 117:2 118:4 118:9 <b>involving</b> 20:18 54:6 122:13,17 130:2 141:23 <b>isnt</b> 36:10 38:9 55:15 82:15 127:1 <b>isolate</b> 113:10 <b>isolation</b> 16:24 <b>issue</b> 85:11 <b>issued</b> 35:19 <b>issues</b> 57:1,9 133:8 <b>ive</b> 58:13 63:18,18 63:18 64:22 79:18 82:17 89:22 108:7 109:4 122:2,3	139:12,12 142:20 149:7 <hr/> <b>J</b> <b>jacobson</b> 1:17 <b>james</b> 2:7 <b>january</b> 1:11 4:2 70:14,17,21 71:25 72:1,5,7,7,8,25 74:7,15,19,21 75:19 76:12 82:22 83:5 84:10 85:14 85:15 152:22 <b>jean</b> 1:15 152:5,20 <b>jei</b> 1:2 <b>jersey</b> 1:1,14,15,16 1:22 152:2,7 <b>jet</b> 62:21 138:25 139:10 141:9 <b>job</b> 53:15 97:21 110:5,11 113:10 149:9,13,15,16,17 149:18,19,20,22 149:22,24 150:9 150:13 <b>jobs</b> 36:22 37:1,9 <b>judge</b> 31:21 78:12 <b>judges</b> 86:14 <b>judgment</b> 4:20 15:16 17:17,19,21 111:12 <b>julie</b> 2:1 <b>july</b> 3:21 117:5,12 <b>justice</b> 71:6,11,14 <hr/> <b>K</b> <b>katz</b> 2:4,4 <b>kazak</b> 33:13 <b>keep</b> 40:22 41:12 46:9 58:8,10 147:14 <b>key</b> 13:22,22 108:4 <b>kind</b> 7:25 12:3 45:11 47:9 48:4 77:21 82:15 83:9 83:10 110:24 <b>kinds</b> 35:3 55:24 56:3,4
--	---	--	--	--

<b>kings</b> 1:22	119:15,18,22	<b>lease</b> 9:4 57:9	89:3,6,13,15,20	110:9 111:22
<b>knew</b> 43:8 81:14	120:22,23 121:18	<b>leases</b> 78:5	92:22 93:5,10,13	115:14 119:9
90:15 103:24	121:25 122:3,11	<b>leasing</b> 6:1	93:18,20 100:1	123:8 124:9
125:12	124:16,17,24	<b>leave</b> 11:17	114:1,3,5 115:16	126:10 127:10
<b>know</b> 5:5 6:2,2,15	125:15,20 126:2,6	<b>leaving</b> 91:10	115:17,25 116:5	142:25 150:13
6:18 7:14,24 8:9	127:4 128:20	<b>led</b> 87:2 125:21	118:14,18,22	151:6
8:12 9:5,8,11,18	136:15 138:21	135:4	119:3,14 122:22	<b>looked</b> 6:17 7:16,16
12:14 13:3,19	139:20 141:5,6,9	<b>legacy</b> 115:22	123:16 125:16,24	25:2,24 27:12,24
15:1,4,5,11,12,16	142:9,18 143:3,12	119:19	129:16,24 130:18	28:11 33:6 58:9
15:20 16:21 17:1	143:13,14,14	<b>legal</b> 106:17 131:6	133:13 134:1	92:23 93:5,11
17:8 18:18 19:6	144:3,10,13	<b>legitimate</b> 109:25	135:23 139:19,20	106:19,25 129:5
19:13,25 20:9	146:24 147:8,23	<b>length</b> 113:23	140:14 141:3	130:7,8 139:11
23:2 27:11 28:5,9	150:22	114:2,3	<b>listed</b> 6:14 9:25	149:7 151:4,5
28:11,15,24 29:3	<b>knowing</b> 53:21	<b>lessors</b> 60:3 79:1,3	29:18,20,22,23	<b>looking</b> 5:19 10:15
29:10 30:5,8,10	68:10	<b>level</b> 33:17 90:1	30:1,4 32:6 65:15	24:16,19 28:9
30:21 31:6,9	<b>knowledge</b> 13:4	<b>leverage</b> 59:1,6	91:20	31:19 34:2,11
32:13,23,25 33:1	19:14 46:17 89:23	<b>light</b> 12:12 124:3	<b>lists</b> 31:7 37:11	45:3 69:9 70:23
33:16 34:7,8,11	118:8	<b>likelihood</b> 10:3	114:9 115:21	70:24 73:9 109:1
34:12,14,20 35:4	<b>knowledgeable</b>	12:18 18:2 26:13	119:5 139:1,10,14	<b>looks</b> 124:4
35:7,16,21 36:1	44:15	70:1 145:13,22	139:16	<b>loss</b> 137:20
38:1,2,13 40:21	<b>known</b> 20:2	<b>likes</b> 112:16	<b>literature</b> 150:3	<b>losses</b> 136:13
41:8,8,9,15 42:1	<b>knows</b> 38:4,6	<b>limited</b> 103:25	<b>litigation</b> 110:24	<b>lot</b> 15:18 31:5 38:1
42:25 43:10,23		104:5 113:16	<b>little</b> 5:4,4 107:4	44:14 113:21
44:10,11,14 45:12	<b>L</b>	<b>line</b> 1:7 81:17 84:8	108:13,14 143:4	116:6 135:20
45:18 46:7,9 47:4	<b>labor</b> 11:1,12	<b>lines</b> 91:17	<b>llc</b> 1:21	<b>lots</b> 44:13 56:2
47:5 48:2,22 49:5	107:12 131:7	<b>links</b> 64:3 88:16	<b>llp</b> 1:25	115:22
50:1,14,17 51:6	146:4 148:2 150:3	120:2,10 121:2	<b>long</b> 55:5 58:3	<b>louis</b> 1:19
52:16,19 53:12,16	150:10	125:12,13 126:13	150:10,10	<b>low</b> 60:16 123:15
55:8,16 58:11,13	<b>lack</b> 33:8 48:20	126:19 127:12	<b>longer</b> 14:24 33:15	136:14 138:10
60:7,13 61:8	49:3 92:5	128:2,22 150:7,8	55:7,7,8	<b>lower</b> 37:14 38:21
63:16,19 65:5,9	<b>lacking</b> 33:18 92:7	<b>lip</b> 116:7	<b>longrange</b> 94:12	92:21 102:20
66:18,20 69:6,11	<b>laid</b> 108:11	<b>liquidate</b> 18:22	98:11,24	107:8 134:3,8
69:16,19,20,20	<b>land</b> 34:17	19:1,3,4,17 84:17	<b>longterm</b> 98:8,22	135:15 136:17
71:10 72:4 73:21	<b>language</b> 70:12	85:10 87:1,18	99:6	137:14 138:11,19
73:24 74:2 77:4	<b>large</b> 94:16,18	<b>liquidates</b> 19:7	<b>look</b> 7:7 13:23 15:4	140:3,12 141:21
77:14 79:3 81:9	150:2	<b>liquidation</b> 18:6	16:22 20:4 24:22	141:22 142:5
85:4 86:10 87:6	<b>largely</b> 12:23	20:7,11 80:6,21	25:3,11 26:21,25	143:17 145:7,9,10
89:25 90:4,7,11	<b>larger</b> 105:11	<b>liquidations</b> 18:16	27:1,13 33:5	145:15,23
90:17,21,23 91:13	138:7 144:1	<b>liquidity</b> 9:13,17,19	34:10,15,18,18	<b>lowers</b> 135:18
91:16 92:3,6,12	<b>law</b> 1:14 132:25	58:22 59:5	35:12 45:6,9,16	<b>lowest</b> 55:19
98:2,18 102:1,1,6	<b>laws</b> 71:8 131:2,4	<b>list</b> 6:16 7:8,9,18	45:22,22 55:16	144:13
103:19 104:1,18	132:1	10:7,11 14:20	58:5,7 61:23 76:5	<b>lunch</b> 128:23
104:19,22 105:1,3	<b>lay</b> 34:16	24:15 25:1,21	77:19 78:3 79:23	129:14
107:6,9 109:7,18	<b>laying</b> 5:4 6:22	27:17,22,24 28:18	81:16,17 83:12,19	<b>luncheon</b> 128:12
109:19 112:6	<b>lead</b> 85:3	31:1 37:2,14	84:8 96:11 100:4	
115:8 116:19,21	<b>leap</b> 32:13	39:10,14 41:17	104:17 106:22	<b>M</b>
117:1,4 118:13	<b>learn</b> 104:20	48:21 49:1 63:21	107:5,20 108:1	<b>magnitude</b> 56:23

73:21 91:1 147:1 <b>main</b> 57:8 103:19 <b>major</b> 85:11 117:7 117:13 <b>making</b> 5:1 21:14 21:18 23:18 55:2 55:5 69:5 94:1 115:8 134:7 137:12 <b>march</b> 78:24 79:7,8 <b>margins</b> 101:13 <b>maria</b> 33:13,13,23 <b>mark</b> 75:5,6 81:2 96:24 99:14 117:11 <b>marked</b> 3:7 65:25 66:3 75:1 80:25 97:5 99:13 117:7 <b>markedly</b> 100:11 103:2 <b>market</b> 150:10 <b>markets</b> 12:14 <b>material</b> 6:25 31:5 <b>materials</b> 6:14 7:3 91:21 122:1 <b>matter</b> 23:9 41:5 41:21 42:1 111:3 152:8,12 <b>matthew</b> 33:15 <b>mccaskill</b> 132:24 <b>mean</b> 9:16,16 14:11 16:16 18:25 19:2 19:4 28:1 31:12 32:10 36:14 38:3 41:7,25 44:10 54:21 55:16 56:8 56:13,13,13,20 58:14 65:4,13 69:4 74:8 86:17 92:11 93:1,7,14 93:17 107:16 109:13 110:12 112:12 114:6,11 114:17 116:16 118:21 120:21 131:24 132:22 133:16,25 134:13	137:12 138:7 140:18 141:11 142:7 143:25 144:6,7,23 145:6 145:15,23 <b>means</b> 14:12 96:17 112:17 143:1 149:1 <b>meant</b> 10:6 15:7 34:15 38:3 41:5 54:22 62:18,18 137:13 145:9 149:17 <b>measure</b> 143:2 <b>measured</b> 140:17 150:9 <b>meat</b> 143:8 <b>mec</b> 73:14 122:15 <b>meeks</b> 70:8 <b>memory</b> 60:9 127:18 <b>men</b> 148:7 <b>mention</b> 150:4 <b>mentioned</b> 122:7 138:24 148:1 150:4 <b>merge</b> 71:6 114:20 115:10,24 116:5 <b>merged</b> 27:24 37:14 119:5,6 <b>merger</b> 32:24 39:10 71:8,12,15 96:17 97:22 101:1 101:11 103:7 105:9 115:20 <b>mergers</b> 7:17 11:16 39:9 55:25 64:7 103:17,20,24 104:17 151:4 <b>merging</b> 115:2,9 <b>met</b> 108:10 <b>method</b> 107:22,23 108:19 109:16 110:19,21 112:9 115:9 <b>methodology</b> 5:1 10:23 12:21,25	13:7 19:9,22 106:4,4 107:14 113:12 129:21 <b>metric</b> 110:13 113:14 114:16 149:2 <b>metrics</b> 111:14 <b>micronumerosity</b> 112:15,16 148:21 <b>middle</b> 55:13 104:7 104:8,9 142:24 <b>midwest</b> 64:1 88:16 120:2,10 121:2 125:13 127:12,21 128:3,22 <b>mild</b> 119:10 <b>million</b> 76:9,10,13 76:13,16,22,23,24 77:1 85:15,17,19 85:20,21,22,24,24 <b>mind</b> 14:14,16,19 15:10 41:9 55:9 <b>minimal</b> 37:11,20 37:23 38:12 <b>minus</b> 30:2 65:16 65:17,17 93:1,7 93:20 134:4 <b>minute</b> 102:24 <b>mischaracterizing</b> 79:14 <b>misremembering</b> 91:4 <b>misrepresent</b> 65:19 <b>missing</b> 30:6,10,13 <b>missouri</b> 1:19 66:24 68:9 <b>misspoken</b> 128:24 <b>model</b> 38:25 150:6 150:6 <b>mohawk</b> 133:2,3 <b>momentarily</b> 15:2 <b>monetary</b> 100:24 <b>money</b> 126:14 127:3 <b>month</b> 16:17 <b>months</b> 37:25 38:2 38:5,11,14 39:5	41:15 91:3,3 <b>morning</b> 4:10,11 82:16 143:16 <b>motions</b> 15:22 <b>move</b> 72:18 142:24 <b>moved</b> 33:16 <b>moving</b> 89:16 <b>multiple</b> 139:1,9,14 <b>multivariant</b> 148:22 <b>municipality</b> 139:16 <hr/> <b>N</b> <hr/> <b>name</b> 33:14,18 66:20 109:5,7,8,9 109:12 113:5 <b>names</b> 33:9 <b>narrow</b> 19:19 <b>narrowly</b> 108:23 <b>nassau</b> 1:14 <b>nationally</b> 131:8 <b>natural</b> 109:22 <b>nature</b> 102:17 115:20 119:5 <b>nauseam</b> 121:16 <b>near</b> 18:6 88:22 <b>necessarily</b> 55:10 119:4 135:22 <b>necessary</b> 10:20 <b>need</b> 16:25 26:24 34:6,7 42:2 58:1 58:17 96:21 105:16 107:22,22 108:2 139:25 <b>needed</b> 15:15 27:8 31:12 55:1 57:10 59:12 76:11,13,22 86:10 103:21,24 104:12 <b>negative</b> 85:25 119:12 <b>negotiated</b> 24:14 24:25 25:20 26:16 26:20 50:25 <b>negotiating</b> 73:14 76:8	<b>negotiation</b> 5:8,9 51:1,7,10 52:2 53:8,10 69:7 73:8 <b>negotiations</b> 8:25 9:6 32:24 73:7 119:8 132:20 <b>negotiators</b> 22:19 69:7 <b>neither</b> 35:12 76:6 <b>net</b> 104:25 <b>never</b> 26:3 81:14 89:22 111:2 138:16 144:5 <b>nevertheless</b> 100:23 <b>new</b> 1:1,14,15,16 1:22 2:2,2 3:22 37:10 70:8 115:16 117:6,11 121:10 152:2,6 <b>newer</b> 115:15 <b>news</b> 30:20,23 32:20 34:8,23 35:5 45:17 48:8 49:17 58:20 <b>newspaper</b> 26:8 27:1 <b>nicole</b> 1:21 <b>nine</b> 84:8 <b>nonarbitration</b> 32:17 <b>nondiscriminatory</b> 106:21 150:16 <b>normal</b> 142:21 <b>northern</b> 65:8 <b>northwest</b> 88:18 89:8 <b>notary</b> 1:15 152:6 152:21 <b>note</b> 139:24 <b>noted</b> 102:22 <b>notes</b> 152:11 <b>noting</b> 42:19 <b>notion</b> 14:4 <b>nuanced</b> 103:20 <b>number</b> 42:1 43:9 49:1 55:9 73:23
--	---	---	--	---

91:8,10 94:16,18 95:12 103:6,16,25 104:5,8,13,15 105:11,16,16 136:17 137:2,8,20 143:15 146:24 150:5 <b>numbers</b> 47:10,12 100:5 115:5,10 <b>numerical</b> 92:1 <b>numerous</b> 48:18	<b>oh</b> 34:18 60:12 67:14 139:18 <b>okay</b> 5:23 12:16 14:3 20:17 21:1 46:8 56:25 61:23 62:6 63:8 64:20 65:21 66:8,22 68:15 69:23 70:11 71:18,23 72:15 74:12,16 76:5 77:5,16 78:3,22 81:16 84:7 88:24 91:23 97:16,20 98:6 100:15 103:5 117:18 121:11 127:1 129:19 137:7 139:8 149:21,24 <b>older</b> 115:18 <b>once</b> 117:22 124:21 <b>ones</b> 10:9 15:17,20 15:24 27:11 88:24 89:4 108:8,24 134:16 <b>online</b> 30:23 31:16 31:24 33:20 35:2 124:1 <b>operate</b> 20:13 <b>operated</b> 94:17,19 <b>operating</b> 18:2 81:25 82:1,3 <b>operation</b> 13:20 15:1 18:17 20:8 38:20 39:4 70:19 125:22 <b>operations</b> 4:22 7:1 10:4,21 11:20 12:19,23 13:2,9 13:13,17 14:5,18 16:17 37:25 38:10 57:24 73:25 74:22 76:14 79:12 83:19 83:20 85:7 90:12 96:22 <b>opinion</b> 4:13 44:23 120:8,18,23 <b>opinions</b> 67:22	147:17 <b>opportunities</b> 94:2 94:4 98:9,22 99:6 <b>opportunity</b> 78:11 79:17 <b>options</b> 87:22 <b>oral</b> 1:13 <b>order</b> 6:1,6 56:12 56:22 71:14 78:10 78:11 79:15 91:1 96:22 104:11 105:15 110:2 115:13 118:22 147:1 <b>ordered</b> 6:3,9 <b>ordering</b> 5:3,24 114:22 116:8 118:21 <b>orders</b> 6:19 <b>ordinary</b> 9:21 11:1 <b>organization</b> 18:15 <b>origin</b> 114:22 <b>ought</b> 7:3 132:25 <b>outburst</b> 72:23 <b>outcome</b> 106:12 109:24 110:10 <b>outcomes</b> 107:1 110:11 <b>outliers</b> 140:21,23 <b>output</b> 5:21 12:4 14:22 44:13 49:22 50:4 57:25 58:16 61:3 83:16,22 84:5 <b>outside</b> 42:4 55:1 116:23 <b>overall</b> 17:11 <b>owed</b> 5:10 85:15,24 <b>ozark</b> 150:20,24 151:2	81:17 83:12 84:7 97:17,18 100:4,5 100:8,21,22 123:6 123:8 <b>paid</b> 116:7 149:6 150:8 <b>pan</b> 3:22 25:4,5 26:2,7,12,17 27:15 32:5 62:12 116:20 117:2,3,6 117:12,21 118:3,4 118:9,14,17,22,24 119:2,10,13,16,19 119:23 <b>paragraph</b> 20:5,17 21:23 36:4,24 37:3,7,8,17 42:16 42:18 54:5 67:3 67:13 75:14,15 76:5,6,21 78:4 79:23,24 100:7 120:1,5 126:10 127:10 <b>paraphrase</b> 64:14 <b>park</b> 1:15 <b>part</b> 6:10 11:13,15 48:10 109:20 113:4 118:10 119:23 136:5 <b>participate</b> 122:17 <b>particular</b> 10:19 11:12,12 16:22 22:6 24:22 25:15 45:16 55:9 57:22 77:2,3 83:9 95:14 106:11,13 109:9 128:4 150:3 <b>particularly</b> 18:10 34:8 45:14 99:3 110:25 149:6 <b>parties</b> 23:6,7,22 152:14 <b>partner</b> 75:16 <b>party</b> 51:7 <b>pass</b> 151:14 <b>passed</b> 69:21 122:15	<b>passenger</b> 130:6,16 <b>paths</b> 18:16 <b>patrick</b> 1:4 <b>paucity</b> 112:14 <b>paul</b> 1:24 <b>pay</b> 9:20 94:21,22 98:12,25 106:22 106:23 146:10 148:15 149:7 150:7,17 <b>paying</b> 49:25 <b>payments</b> 5:10 57:10 <b>payroll</b> 15:5,6 <b>pc</b> 2:4 <b>peer</b> 13:6 <b>pending</b> 51:25 <b>people</b> 5:7 7:9 24:18 33:10 44:15 44:16 89:16 106:20,22 129:5 136:6 150:8 <b>percent</b> 63:17 78:5 113:1 <b>performance</b> 149:14,15,16,23 <b>performed</b> 149:9 149:18,19,20,24 150:13 <b>period</b> 7:6 41:9,10 44:17 63:25 100:12 103:3 <b>person</b> 105:1,2,3 <b>personally</b> 27:5 95:7 97:11 99:21 117:17 <b>perspective</b> 85:17 <b>ph</b> 33:11 <b>phrase</b> 18:10 108:23 109:21 112:15 <b>pick</b> 89:4 <b>picture</b> 17:14 107:18 <b>piecemeal</b> 80:5,20 <b>pierson</b> 33:15 <b>pilot</b> 97:21 115:3
<b>O</b>				
<b>object</b> 18:9 51:15 72:17 78:8,14 79:13 80:12 84:23 86:16,18 <b>objection</b> 72:13,16 72:20 86:15,21 <b>objective</b> 17:21 111:13 <b>obligation</b> 79:19 <b>obligations</b> 9:4 57:11 77:3 <b>observation</b> 120:16 120:17,19,23 144:6 <b>observations</b> 141:14 <b>observe</b> 106:11 109:23 <b>observed</b> 145:8 148:6 <b>observing</b> 120:24 <b>obtain</b> 126:3,7 <b>obviously</b> 67:23 110:9 <b>odd</b> 29:25 <b>offer</b> 79:25 112:22 112:24 <b>offered</b> 44:23 63:8 <b>offering</b> 4:13 120:8 120:18 <b>offhand</b> 63:20 73:23 <b>office</b> 1:14 129:5 <b>officers</b> 98:7				
		<b>P</b>		
		<b>page</b> 3:2,7 42:19 66:16,22 67:3,10 67:15 70:5,6,11 70:22,23,24 71:2 71:4 75:13 81:16		



<p>138:2,3  <b>pilots</b> 1:7 7:12 8:11  31:3 36:7,11,21  36:25 37:9,11  38:11,22 39:2,3  40:23,24 49:23  53:2,9,12 90:17  90:22 91:2,5,6,9  91:10 93:22,23  94:3,4,9,13,14,17  94:19 97:25 98:6  98:13,16 99:5,7  100:25 112:23,25  113:23 114:13,19  114:23 115:4,6,10  115:14,16,17,22  116:13 117:3,3  118:12,18,22,25  119:2,11,11,13,16  119:19,20 122:12  123:15 135:20,25  136:3,7,7,10,10  136:13,20,22  137:2,8,10,14,17  137:25 138:5,9  <b>placed</b> 37:13  123:15  <b>placement</b> 118:17  <b>plaintiff</b> 1:20,23  <b>plaintiffs</b> 1:5  <b>plan</b> 80:2,4  <b>plane</b> 43:19  <b>planes</b> 60:3  <b>plans</b> 124:25  <b>played</b> 13:24,25  <b>please</b> 4:5 90:16  93:8  <b>plus</b> 143:23  <b>point</b> 12:17 27:14  61:4,9 69:5 73:3  103:6 128:19  136:1,21  <b>pointed</b> 49:20  <b>pointing</b> 50:5  <b>policy</b> 69:20  <b>political</b> 69:5,12,14  71:10,21</p>	<p><b>poor</b> 20:22 21:24  21:25  <b>position</b> 58:8,10  71:19 81:20 96:9  96:14 122:11  <b>possession</b> 68:16  68:18  <b>possible</b> 31:11  77:16 138:10  <b>post</b> 123:15  <b>potential</b> 47:1,6  98:12,25 122:8  <b>precise</b> 15:12 90:23  105:13 143:6  <b>predict</b> 44:21 58:2  129:21  <b>predicting</b> 108:20  <b>predictive</b> 105:25  <b>premier</b> 117:24  118:25  <b>preparation</b> 76:18  <b>prepared</b> 68:1,12  68:23 75:20 80:10  82:9  <b>preparing</b> 75:25  77:7 84:22 86:5  <b>presence</b> 109:24  <b>present</b> 1:16 2:7  <b>presentations</b> 23:6  <b>presented</b> 24:4,20  <b>presently</b> 41:4  <b>preserve</b> 75:21  114:9  <b>press</b> 1:18 18:9  27:2 34:9,9 43:24  44:17 51:14 66:23  68:5 72:11,14,17  72:22 74:8,14  78:8 79:13,19  80:12 84:23 86:13  86:16,22 121:15  125:6 128:5,7  132:14 151:15  <b>pressed</b> 44:4  <b>pressure</b> 71:14  <b>presumably</b> 44:16  141:21 151:4</p>	<p><b>prevented</b> 105:17  <b>previous</b> 123:10  <b>previously</b> 43:7,9  66:4 75:9 147:7  <b>prices</b> 59:24  <b>primary</b> 51:20  <b>princeton</b> 1:14,15  <b>prior</b> 7:8 13:12  57:2 76:18 84:22  86:5 89:24 99:7  126:12 139:19  <b>priority</b> 124:20,21  <b>private</b> 132:17,20  132:20,21  <b>probability</b> 144:22  145:18  <b>probably</b> 103:18  105:12 124:17  128:8 143:24  147:2,9  <b>problem</b> 107:19  <b>problems</b> 47:23  57:6,18  <b>process</b> 18:23  78:23  <b>procure</b> 80:3  <b>produce</b> 138:19  <b>produced</b> 135:15  <b>product</b> 110:19,21  <b>professional</b>  111:12  <b>professor</b> 4:10,12  8:21 61:19 86:25  87:12 97:9 99:19  107:18 117:15  128:16 129:9,19  145:25 151:13  <b>profit</b> 81:25,25  82:1,4  <b>profitability</b> 58:3  82:21 83:3 90:1,5  <b>profitable</b> 126:16  <b>profits</b> 101:12,22  <b>progressed</b> 76:15  <b>promotional</b> 94:2,3  98:8,22 99:6  <b>proportional</b> 28:1</p>	<p>92:10,25 93:6,14  93:17,18 107:15  109:13,14 110:12  112:11 114:6,11  114:16 116:15  133:16,25 134:13  144:23 145:5,14  145:22  <b>proportionate</b>  149:1  <b>proposal</b> 122:7  <b>proposition</b> 95:17  <b>prospect</b> 78:25  79:7 126:15  <b>protocol</b> 17:5,9  <b>proud</b> 117:23  <b>provide</b> 46:11,19  47:2 64:24  <b>provided</b> 7:4 31:7  68:18  <b>provides</b> 25:6  <b>provincially</b> 131:9  <b>provisions</b> 133:2  <b>pseudo</b> 104:19  <b>public</b> 1:16 34:7  35:13 152:6,21  <b>purchase</b> 76:8  <b>purpose</b> 122:3  <b>purposes</b> 22:7  133:22  <b>pursue</b> 124:23  125:1  <b>pursued</b> 28:7  <b>put</b> 40:25 53:16  69:17 85:17  115:25 122:2,3  123:11 124:18  143:6,8  <b>putting</b> 69:21  71:13</p>	<p><b>quantitatively</b>  14:12  <b>question</b> 4:18 12:6  12:15 15:20 17:1  18:10 19:18,19,20  22:21 24:21 26:2  37:5 38:9 44:8  46:15 51:3,8,11  51:15,19,23,25  52:1,3,10 56:18  71:23 80:13 81:21  81:23 83:2,25  84:11,14,24 86:19  90:10 93:8,9  102:2 109:25  113:9 120:20  121:10,12 123:10  123:20,23 124:9  132:9 140:19  <b>questions</b> 78:9  79:14,20 81:18  151:15  <b>quite</b> 11:23 15:10  15:14 16:12 26:22  26:22 36:19 47:22  55:12 87:8 102:10  126:22 135:20  141:9 142:23,23  143:11 148:10</p>
<b>R</b>				
<p><b>race</b> 146:10  <b>ran</b> 46:4  <b>range</b> 11:15,16,23  15:14 98:9,23  104:2 142:16,17  <b>rank</b> 92:11 93:1,7  93:14 112:12  114:6,17 116:16  133:16,25 134:13  145:6,23  <b>ranked</b> 141:1  <b>ranking</b> 114:10  <b>rankings</b> 114:12  <b>ranks</b> 93:17,19  107:16 109:13  114:11 144:24</p>				
<b>Q</b>				
<p><b>qualifications</b> 18:1  <b>qualify</b> 72:2 74:21  87:19  <b>quantitative</b> 8:4  14:10,13</p>				

<p>145:15  <b>ranzman</b> 2:4  <b>rate</b> 20:2 76:16  77:2  <b>ratio</b> 115:11 136:1  <b>rationale</b> 24:2  102:12,21  <b>reached</b> 52:15,18  <b>reaches</b> 23:24  <b>read</b> 5:8 6:12 8:14  9:2 11:21 17:9,17  17:21 26:5 51:22  51:24 53:1,18  54:1 66:4 67:23  78:11 95:7 97:13  97:15 99:23  102:23,24 118:6  122:1,1,1 131:10  132:6 139:12  <b>reading</b> 6:11,25 7:2  8:1 12:10,24  15:13 16:23 17:13  18:13 24:17,18  40:17,18 43:23  60:18 67:9 68:6  87:21 104:1,2  129:8 131:19  132:3,10 133:6  <b>reads</b> 131:13  <b>ready</b> 129:17  <b>real</b> 12:1 78:24  83:7,8,8 113:15  113:15  <b>realized</b> 103:16  <b>really</b> 13:24 15:3,4  15:23 19:17 20:9  27:23 38:4 48:1  53:12 65:5 69:19  104:6,7 105:3  112:1 114:13  142:12  <b>realm</b> 141:10  <b>reason</b> 28:10 93:19  148:10,13  <b>reasonable</b> 21:16  24:3 40:24 142:18  144:14</p>	<p><b>reasonably</b> 20:20  21:20 54:7 55:14  55:22 90:24 142:8  142:11,15 143:5  <b>reasoning</b> 139:14  <b>reasons</b> 28:21  <b>recall</b> 26:15 46:14  46:22,23 60:10,15  73:23 95:1,6,12  95:24 96:3,6  117:4 133:3  146:13,14 150:25  <b>recategorize</b>  111:21  <b>receivable</b> 85:12  <b>receiving</b> 73:18  <b>recess</b> 61:15 128:12  151:10  <b>recognized</b> 42:7  <b>recollect</b> 96:23  <b>recollection</b> 6:7  31:2 81:13 91:25  92:2 96:8,13,15  96:20 118:2  126:18,24 127:20  139:13  <b>record</b> 4:4 8:1 12:5  15:13 23:4 24:16  24:17,18,24 25:16  26:11 46:6 49:23  61:12,14,17 71:13  87:22 100:8  101:12,22 108:13  128:11,14 151:7,9  151:12  <b>records</b> 46:9  <b>redirect</b> 79:18  <b>reduces</b> 141:13  <b>referring</b> 22:2  24:24 26:12 67:4  67:7 68:17 78:22  106:5 107:15  <b>reflected</b> 22:9  23:18,24 28:12  <b>reflecting</b> 22:17  <b>reflection</b> 24:2  53:24</p>	<p><b>reflects</b> 23:6  <b>refresh</b> 60:9 81:13  118:2 126:18  127:20  <b>refund</b> 33:3  <b>regard</b> 20:7,7,14  22:3 24:8 42:14  43:17 52:24 89:23  90:14 120:9 141:6  146:10  <b>regarding</b> 3:19  22:25 30:18 31:17  33:21 51:12 52:5  52:15 95:3,8  99:12 122:12  132:13  <b>regression</b> 148:4,8  148:13,17  <b>regulations</b> 132:1  <b>regulatory</b> 132:23  <b>reject</b> 116:1,2  <b>related</b> 105:9  <b>relative</b> 72:6 94:7  94:10,18,22  152:15  <b>relatively</b> 93:22  119:23  <b>relevance</b> 13:15  60:20  <b>relevant</b> 24:8 43:1  51:3,11 52:3,8,10  57:15 58:23 59:2  59:9 98:25 99:4  122:20 130:5,16  132:1 141:24  <b>reliable</b> 107:23  <b>relied</b> 10:13 11:10  <b>rely</b> 19:10 80:1  <b>relying</b> 17:21 20:1  24:5 25:14 48:2  48:11  <b>remaining</b> 117:24  <b>remember</b> 6:12  31:19 40:17 60:17  61:21 88:19,20  139:7 143:15  146:20</p>	<p><b>remove</b> 140:21  <b>removing</b> 141:12  <b>rendering</b> 130:11  <b>reorganize</b> 19:3  <b>repeat</b> 51:8 93:8  <b>rephrase</b> 45:5  <b>replace</b> 91:6  <b>report</b> 20:5 25:9  28:10 30:9 32:6  40:18 42:19 54:6  61:25 63:9 64:11  64:19 68:1,12,23  76:19 77:7 80:10  82:9 84:22 86:5  87:5 91:20 96:11  120:1 123:4,10,13  124:7,8,11,14,21  126:11 127:11  131:10,13 133:13  135:13 139:12  146:23  <b>reported</b> 152:7  <b>reporter</b> 1:15 4:5  51:24 152:6  <b>reporting</b> 32:9  <b>reports</b> 8:2 11:22  12:10,24 16:24  27:1 34:8 35:19  35:24 48:9,11,13  48:16 49:17 58:21  62:16 104:2 129:8  130:9  <b>repossessed</b> 60:3  <b>represent</b> 43:3  <b>representation</b>  93:12 106:17,18  107:3,21,25 108:3  108:22 109:25  113:11 133:18,24  134:12 135:4  142:2 145:4,21  <b>representative</b>  53:20 70:8  <b>representatives</b>  54:2  <b>republic</b> 64:2,4  125:12,12 126:13</p>	<p>126:14 127:15  141:11  <b>request</b> 31:4  <b>required</b> 27:25  <b>rescued</b> 101:3  <b>research</b> 13:7  34:24 123:5,19,23  125:1 130:4  <b>resist</b> 111:11  <b>resolution</b> 22:23  24:14,25 25:20  122:16  <b>resolutions</b> 26:17  95:21  <b>respect</b> 26:12,16  30:12 45:13 49:6  51:4 83:14 98:16  113:9 118:12  125:3 128:2,4  134:2 138:24  144:16  <b>respects</b> 110:8  <b>rest</b> 64:8 125:15  <b>restrict</b> 35:11  <b>restricted</b> 35:5  <b>restructuring</b> 5:9  54:25 56:1  <b>result</b> 104:6 108:20  119:8 135:24  144:3  <b>resulted</b> 105:12  <b>results</b> 76:3 105:25  129:22  <b>retained</b> 146:8  <b>retiring</b> 91:6,10  <b>retrospect</b> 15:8  <b>revenue</b> 86:10  <b>revenues</b> 86:12  <b>review</b> 35:6,8,13,18  35:23 99:21  <b>reviewed</b> 13:6  75:10 97:11  117:16  <b>reviewing</b> 95:11  130:13  <b>richards</b> 1:21  <b>rifkind</b> 1:24</p>
--	---	---	--	--

<b>right</b> 23:24 28:20 29:24 34:14 41:13 50:23 51:2 54:23 60:17 61:11 62:3 64:13 68:15 70:5 74:19 84:10 100:6 107:9 115:7,19 123:18,21 126:1 136:1 137:1,6 138:10 142:21 146:7,13,14,20 <b>risk</b> 10:4 101:7 <b>robust</b> 100:11 103:2 <b>rodriguez</b> 1:21 <b>role</b> 13:23,25 <b>romm</b> 2:1 <b>rothschild</b> 75:17 <b>rotten</b> 47:22 <b>rough</b> 3:13 80:24 81:3 122:4 147:1 <b>route</b> 58:11 117:21 <b>routes</b> 5:22 14:23 32:22 117:7,13,24 118:25 119:1 120:4,13,14,21 121:1 <b>rule</b> 144:5,5 <b>rules</b> 18:17 20:10 131:2,3,21,22,24 131:25 <b>run</b> 110:3 138:13 138:18 <hr/> <b>S</b> <hr/> <b>saga</b> 117:22 <b>salamat</b> 138:18,21 143:16 <b>sale</b> 67:6,7,18 78:23 <b>sample</b> 108:8 144:10 145:1 148:21 <b>saw</b> 8:2 71:4 143:10 <b>saying</b> 7:14 27:12 29:22 44:7 49:17	69:14 82:24 89:11 104:3 107:7,18,20 109:15 110:20 120:11 121:8,9 134:5 137:3,21 138:10 139:13 140:24 <b>says</b> 37:4 67:4,16 68:15 70:12 75:15 76:6,22,23 78:4 79:24 84:9 97:20 98:6 100:8,23 101:10 107:6 117:20 127:12 <b>scare</b> 53:14 <b>scenario</b> 41:12 91:4 <b>schedule</b> 87:8 <b>schedules</b> 129:2 <b>school</b> 8:22 <b>science</b> 109:1 110:6 111:9,11 113:15 <b>scientific</b> 109:11,16 110:19,21 112:9 113:12,17 <b>scientifically</b> 107:22 108:17,19 109:3,6 110:17 <b>screen</b> 34:18 <b>se</b> 42:20 <b>seaboard</b> 62:5 141:1,5,11 143:23 144:4 <b>search</b> 34:6,7 35:1 35:11 45:11,22 46:4 123:25 <b>searched</b> 30:20,21 34:21 45:25 <b>searches</b> 31:24 33:25 46:10 <b>searching</b> 30:22 31:16 33:20 35:2 <b>season</b> 76:11 <b>seats</b> 60:17 <b>second</b> 54:14 62:14 62:18,25 78:3 98:7 126:11 141:18	<b>seconds</b> 109:19 <b>section</b> 78:25 79:3 <b>sections</b> 133:3 <b>see</b> 5:12 10:19 12:4 17:9 20:24 28:2 36:8 42:21 45:17 50:11 54:11 58:5 66:8,14,25 67:8 67:14,18 68:19 70:7,9,12,14,21 75:15,22 76:6,25 77:19 78:4 79:1 79:24 80:7 81:18 82:6 83:18,20 84:8,17 86:2 93:1 97:17,20,24 98:13 100:8,13,22 101:4 101:14 114:6 117:25 118:6 126:16 127:11,15 138:18 139:18 145:10 <b>seeing</b> 112:12 <b>seek</b> 36:8,12,18 151:1 <b>seen</b> 13:6 42:10 81:6 97:8 99:18 116:3,6 117:14,16 142:17,20 <b>sees</b> 23:4 <b>select</b> 98:10 118:5 <b>selfhelp</b> 80:2 <b>selfserving</b> 53:7 <b>sell</b> 3:23 19:5 117:7 117:13,23 <b>selling</b> 20:12 <b>sen</b> 33:14 <b>senate</b> 69:18 <b>senator</b> 66:18,23 68:4,6,9,11 69:4,8 69:15,24 <b>send</b> 125:16,18 <b>senior</b> 119:19 <b>seniority</b> 7:8,18 22:23 24:15 25:1 25:6,21 27:22,24 28:18 31:1,7 37:2	37:11,14 48:21 49:1 51:1,10 52:2 52:15,17 92:22 93:5,10,13,19 95:3,13,21 108:20 111:3 114:1,3,7 114:10,12,15 115:5,19,21,22 118:14,18,19,21 118:23 119:1,14 123:16 129:22 131:2,4,21,22 132:13,19 133:1,8 133:10 134:1 139:1,9 144:17 150:24 <b>sense</b> 6:16 9:23 12:1 45:2 55:22 69:22 103:15 110:23 135:14 <b>sensitive</b> 104:4 <b>sentence</b> 71:1 78:4 100:22 101:10 126:11,23 127:11 127:12 <b>serious</b> 32:25 40:20 <b>service</b> 113:23 114:2,3 116:7 <b>set</b> 13:19 14:2 20:17 109:20 110:7 140:5 <b>sets</b> 130:10 <b>setting</b> 13:7 <b>seven</b> 61:25 66:17 67:3,10 75:17 104:8 133:14,19 140:5 <b>seventh</b> 141:19 <b>sex</b> 146:10 <b>shape</b> 5:11 9:24 21:10,11,15,16,20 21:20 102:3,23 103:4 <b>shed</b> 124:3,3 <b>sheet</b> 5:17 25:3 <b>shes</b> 33:13 <b>shirking</b> 106:16	<b>shitter</b> 53:13 <b>short</b> 44:11,17 <b>shortest</b> 13:25 <b>shorthand</b> 1:15 152:5 <b>shoulder</b> 34:17 <b>show</b> 33:8 43:19 66:2 75:4 117:10 124:12 <b>showed</b> 143:15 <b>shows</b> 127:17,17 <b>shut</b> 39:21,23,23 54:23 56:16 70:13 70:16 71:24 74:20 111:21 112:3,4 <b>shutdown</b> 72:8 <b>shutting</b> 72:1 <b>side</b> 17:12 23:12,14 35:19,24 53:11 141:16,16 <b>sides</b> 22:19 24:20 <b>sign</b> 40:19 <b>signs</b> 83:20 <b>similar</b> 106:19,20 108:4,12 110:8 130:10 <b>simply</b> 7:24 13:18 32:24 58:5 108:10 110:13 123:24 141:18 144:6 <b>single</b> 16:24 57:22 113:18 <b>sit</b> 13:21 25:14 34:17 50:23 53:23 65:1 96:7,12 123:2 126:1 139:21 145:12 146:19 <b>sitting</b> 15:8 <b>situation</b> 15:18 17:11 25:19 32:17 36:3,25 47:24 49:22 51:2 58:23 59:5 86:1 106:12 106:22,23 107:20 109:23 <b>situations</b> 13:19
--	--	---	---	--

17:15 48:12,14 92:7,10 108:2,4,5 <b>six</b> 147:9 <b>sixth</b> 141:19 <b>size</b> 83:18 <b>skill</b> 150:8 <b>skinny</b> 105:2 <b>small</b> 145:1 148:22 <b>smaller</b> 92:17 137:16,20,21 <b>socalled</b> 66:21 <b>solid</b> 117:21 <b>somewhat</b> 85:6 96:18 101:14 105:4 119:10 142:24 <b>soon</b> 15:12 38:4 43:25 85:7 89:13 112:4 <b>sorry</b> 29:21 62:8 67:8 70:25 72:22 72:25 83:24 90:9 126:5 136:2 137:11 <b>sort</b> 7:1 8:1 32:25 44:12 47:12 55:13 131:11 141:15 <b>sounds</b> 86:20 <b>source</b> 6:8 8:17 25:12 26:3 <b>sources</b> 7:2 26:7 30:21,23 32:6 34:7,20,24 35:5,6 35:9 45:24 59:19 77:20 123:25,25 <b>southwest</b> 122:23 123:16 <b>span</b> 43:13 <b>speaking</b> 68:3 <b>specialist</b> 4:1 61:13 61:16 128:10,13 151:8,11,16 <b>specific</b> 7:2 34:1,4 34:9 41:8 61:9 92:1 <b>specifically</b> 151:3 <b>specificity</b> 34:19	<b>specifics</b> 89:12 96:6 <b>specify</b> 17:8 <b>speech</b> 86:21 <b>spent</b> 85:22 123:24 <b>squares</b> 76:25 <b>ss</b> 152:3 <b>st</b> 1:19 <b>stable</b> 101:1,3 <b>staff</b> 33:12 <b>standard</b> 132:18 <b>standards</b> 132:2,4 132:12,13,14,16 133:9 <b>standing</b> 72:5,7,24 <b>stands</b> 98:2 <b>staple</b> 135:9,9,10 135:14,18,24 136:2,2,3,8,10,20 136:21 137:1,14 137:23 138:14,14 138:19 <b>start</b> 36:13,15,21 37:4,6,10 136:9 146:7 <b>started</b> 98:7 104:2 115:3,6 <b>state</b> 1:16 142:12 152:2,6 <b>stated</b> 27:12 105:18 136:19 <b>statement</b> 10:7 16:25 32:19,19,20 36:17 37:5 68:8 68:10,12 69:2,15 70:7 120:9 134:8 <b>statements</b> 5:18 10:14,16 32:20 48:8 53:8,9,17 69:12,13 71:20 <b>states</b> 1:1 3:11 11:23 24:1 74:25 75:7 131:5,8,23 133:11 <b>stating</b> 48:9 <b>statistic</b> 144:9 <b>statistical</b> 103:21 140:20	<b>statistics</b> 140:16 <b>status</b> 136:25 139:15 <b>stenographic</b> 152:11 <b>steps</b> 30:14,18 74:3 <b>stop</b> 14:25 18:2 34:13 41:23 45:4 46:1 88:7 89:11 144:19 <b>stopped</b> 88:6 <b>strange</b> 131:12 <b>strategic</b> 75:16 79:24 <b>street</b> 1:14 <b>strength</b> 42:7,11 54:15 <b>stress</b> 40:21 <b>strict</b> 119:6 <b>stronger</b> 112:24,25 <b>structure</b> 59:15 <b>struggling</b> 15:23 <b>study</b> 77:14 <b>stuff</b> 35:3 <b>subject</b> 18:11 19:15 147:20 <b>subjective</b> 17:16,20 143:7 <b>submitted</b> 146:22 <b>submitting</b> 124:6 124:11,14 <b>substantial</b> 57:9,23 57:23 58:11 134:23 <b>substantially</b> 118:4 <b>succeeded</b> 139:19 <b>success</b> 9:15,16 <b>successful</b> 9:9,12 <b>successfully</b> 28:4 <b>sufficient</b> 32:15 119:1 <b>sufficiently</b> 9:19 20:22 21:24,25 <b>suggest</b> 32:7 119:2 <b>suggesting</b> 55:10 <b>suite</b> 2:5 <b>suitor</b> 85:5	<b>summarize</b> 17:11 17:12 <b>supervising</b> 33:11 <b>support</b> 61:4 104:15 122:17 148:22 <b>suppose</b> 20:19 26:6 41:25 47:10 120:22 <b>supposed</b> 86:14 <b>sure</b> 26:23 47:7,11 52:12 64:9 65:23 68:2,2 69:7,9,10 114:14 116:18 126:22 131:24 <b>surely</b> 138:7 143:14 <b>survival</b> 98:7 <b>survive</b> 76:11 <b>sustained</b> 100:12 103:3 <b>swear</b> 4:5 <b>sworn</b> 1:13 4:7 54:1 152:9 <b>symmetric</b> 144:12	111:23,23,24 112:1,10 113:12 113:17 115:11,11 115:12,12,12,12 116:4,12 123:8 126:10 127:10 128:6,9 133:19 135:2 143:9 149:12,25 <b>taken</b> 1:14 54:2 100:24 108:7 152:11 <b>takeover</b> 96:1 <b>takes</b> 39:8 <b>talk</b> 56:18 <b>talked</b> 14:3 16:14 49:21 51:18 61:20 106:3,6 112:16 <b>talking</b> 9:3 14:17 47:8 48:12,17,18 72:6 89:11 100:23 104:3 110:16 132:16 139:5 146:5 <b>team</b> 27:6,17 29:16 30:14 31:15,23 33:5 45:18,25 <b>technique</b> 19:19,25 104:23 <b>tell</b> 16:25 25:12,16 33:14 35:12 40:14 44:1,2 45:24 46:3 63:17,20 65:5,11 72:10 80:17 89:12 109:10 127:18 <b>telling</b> 87:21 <b>tells</b> 89:13 <b>ten</b> 43:6,13 91:22 115:6,7 <b>tend</b> 17:11 69:11 95:21 112:24,25 <b>tended</b> 123:5 <b>tendency</b> 143:2 <b>tends</b> 104:25 <b>term</b> 14:9,14 20:11 44:11 55:10 100:10 102:7
--	--	--	--	---

111:11	120:17 133:21	43:12 55:13,18,18	97:7 99:14,17	123:1,15,17 124:4
<b>terms</b> 6:19 8:12 9:6	134:6,25 135:7	55:20 61:20 63:21	117:9 121:21	125:5,25 127:2,22
16:3 20:15 21:19	137:6 138:11	88:20 105:20	125:8,19 128:6,8	127:25 130:21,23
26:4,4 34:11 40:5	141:15 142:3	111:25 134:18	128:15 133:5	130:24 131:20
54:15 57:24 58:13	143:9,10 145:1,17	<b>thursday</b> 117:23	140:1 151:7,13	133:17 134:2,14
106:17 108:12	146:12 149:22	<b>ticket</b> 60:7,10,13	<b>today</b> 4:1 54:14	134:24 138:25
121:7,14,19 146:9	<b>theres</b> 39:25	60:20	65:1,22 81:7 89:1	139:6,10 140:9,9
<b>test</b> 138:13,18	102:20 142:16	<b>tickets</b> 33:2	89:12 96:7,12	145:13,19 150:19
<b>testified</b> 4:8 14:8	<b>theyre</b> 50:16 113:3	<b>tiger</b> 62:11 100:9	103:22 145:13	<b>transactions</b> 26:21
54:14 61:10 66:4	<b>theyve</b> 32:22	100:18 101:7,11	<b>told</b> 34:6,11 38:3	28:11 29:17,20,21
75:9 135:8,12	150:10,11	102:11,13,14,22	49:21 65:10 78:1	29:25 30:2 32:11
146:1 147:12	<b>thing</b> 103:19	102:23	122:3	48:19 55:17 62:1
<b>testimony</b> 54:1	109:10 113:17	<b>tigers</b> 3:20 62:5,7	<b>tomorrow</b> 34:14	62:24 63:14 64:16
61:21 66:5,18	115:23 136:16	99:13,16 141:1,5	38:20 103:6	65:2,12 91:19,22
67:19,21 68:23	144:14	141:11 143:23	<b>top</b> 40:2,9,15 67:15	92:3,13 112:12
76:10,17 82:20	<b>things</b> 32:10 47:25	144:4	70:11,22 88:22	114:5 129:25,25
84:18,21 85:8	47:25 48:1 50:5	<b>tim</b> 33:17	115:25 135:9,10	130:2,19,20
86:5 88:1,5	56:2 78:10 98:15	<b>time</b> 4:4 30:8 39:5	135:24 136:2,3,9	132:17 133:14,20
100:13 146:5	98:22 105:9 107:6	41:9,10,14,15	137:23 138:14	140:6,13 141:23
152:11	112:18,19 116:10	42:14 43:4 44:25	140:8,13	145:4
<b>testing</b> 19:22	142:24 143:3	50:2 57:6 61:13	<b>total</b> 85:16,16	<b>transcript</b> 3:9,13
129:19,23	149:10	61:16 68:12,23	<b>traffic</b> 60:24	65:25 66:17 70:6
<b>texas</b> 3:17 62:20	<b>think</b> 5:8 7:19 25:4	70:18 73:13 81:12	<b>trained</b> 121:25	80:25 81:3,17
92:14,16 93:24	25:8 28:6 29:19	84:13 87:16 90:2	<b>training</b> 11:11,18	83:13 84:8 152:10
94:23 95:2,8 97:1	30:1 41:7,11	90:8,18 101:11,20	12:7,13,17	<b>translate</b> 53:16
97:5	43:22 45:6,6	101:24 113:1	<b>transaction</b> 4:14	<b>trends</b> 90:5
<b>text</b> 128:24 131:13	47:17 48:5,25	123:25 125:5,14	16:18 29:7,10	<b>trial</b> 146:6
<b>thank</b> 151:13	50:5,6,20 52:7,10	126:19 127:2,13	32:8,12 37:13	<b>tried</b> 6:16 43:23
<b>thats</b> 5:15,15 6:3	62:18 63:23 64:1	127:21,25 128:9	40:11 42:15,23	53:2
9:15 18:4 21:22	64:15 65:19 66:3	128:10,13 136:5	43:5 44:25 54:11	<b>trim</b> 140:21
27:15 28:20 36:16	71:4,4,15,20 72:4	139:17 141:9	54:20 56:7 57:2,7	<b>trimming</b> 144:12
37:6 38:8 39:11	74:13 79:18 91:3	149:10,24 151:8	62:2,5,11,12,13	<b>trouble</b> 12:1 39:25
39:18,20,25 49:8	102:7 109:21	151:11,16	62:13,16,21,21	113:3,4
49:13 52:7 53:15	110:17,18 123:12	<b>times</b> 3:22 42:24	65:8 66:5,12 69:2	<b>troubled</b> 55:23
56:17,17 58:25	125:8 133:16	43:9,13 49:21	70:2,18 71:25	<b>true</b> 8:3 38:8,9
65:17 66:7 68:6	135:17 138:24	82:16,17 117:6,12	73:11,14 74:5,13	86:18,25 87:16
71:16 75:12 82:18	139:11 150:21	146:22 147:3,6,9	74:18 79:25 81:12	88:1 98:15 119:7
83:20 86:9,15	<b>thinking</b> 8:13 22:6	147:12,16	87:17,17 89:25	119:7,9,10 127:1
89:2 98:19 102:17	<b>third</b> 16:10 18:18	<b>toal</b> 3:4 4:9 18:20	90:19,22 92:16,21	127:6 142:12
102:19 103:8	43:5 64:10 84:9	51:22 52:9 61:12	93:23 95:5 96:21	152:10
104:9 107:5	84:13	61:18 66:1 67:1	98:16 99:7,25	<b>trujillo</b> 1:21
108:15,16,16	<b>thought</b> 26:3 34:3	68:7 72:13,15,20	100:18 101:7,17	<b>truly</b> 51:14 104:11
109:4 110:14,14	103:14,15 111:19	73:2 74:12,16,17	101:20,24 105:25	142:4
111:5,8 114:1,2	135:13 139:4	75:3 78:16 79:17	110:4 114:18	<b>try</b> 11:14 17:12
115:20,21,24	144:14	79:21,22 80:14	116:19 117:2	25:18 30:15 31:16
116:14,14 119:11	<b>three</b> 16:7 29:11	81:2,5 85:1 86:15	118:3,9 119:24	32:1 33:2 34:16
119:21,25 120:16	30:5 39:25 40:6	86:20,24 96:24	122:9,12,17,22	36:25 45:25 59:16



59:24 112:10 116:23 118:17 124:1,14 130:4,15 138:8 148:5 <b>trying</b> 10:24 17:2 24:19 43:24 53:10 58:2 69:8 72:4 115:1 123:25 127:18 140:11 141:15 142:4,14 143:14 <b>tuck</b> 8:22 <b>turn</b> 70:5 80:1 <b>turns</b> 55:23 116:7 <b>tw</b> 120:12 121:1 <b>twa</b> 4:14,21 5:2,24 6:9,22 7:6,12 8:7 8:10,25 9:23 11:16 12:5 15:23 31:3 39:14 40:3 40:25 42:14,24 43:4 44:24 45:4,7 45:13,19 46:1,12 46:20 48:4 49:6 49:11,18 50:11 52:20,25 53:2,3,5 53:9,14 55:20 56:2 57:1,6,16,18 58:16,18 59:2,16 59:20,25 60:2,4 60:11,16,17,20,24 61:3,5 62:2 66:12 67:4 68:16 69:2 70:13,16,19 71:5 71:24 72:2 73:4 73:10,13,13,17,24 74:5,20 75:16 76:7,8,11,13,15 77:13,17,24 78:4 78:23 79:6,11,24 80:1,2,21,21 81:11,15,19,23 82:3,4,18,21 83:1 83:3,4,17 84:16 84:16 85:4,9,17 85:23 86:6 87:1,2 87:6,10,17,22	88:5,7 89:20 90:15,18,21 91:13 91:16 93:6,22 94:4,6,9,10,13,19 94:22 98:16 99:5 101:21,21,25 102:13,13,21 104:7,17 108:12 110:4 120:2,9 121:1 122:8,12,15 127:1,24 128:2 130:1 133:17 135:25 136:7,10 136:10,13,22 137:2,8,13,17 138:2,5,9 141:5 150:20,24 151:2 <b>twas</b> 7:23 8:11 9:4 9:12,17,19 15:18 15:25 53:19 58:22 59:1,6,15,23 69:25 75:20 76:9 76:11 84:9,12 85:16 86:10 89:24 90:1 <b>twelve</b> 82:1 <b>twice</b> 65:15 <b>two</b> 26:8 29:4 30:24 32:4 37:25 38:1,5 38:7,10,14,15 39:4 41:13,14,18 55:20,21 62:15 63:9,24 73:1 97:21 103:8 108:5 109:19 114:13 115:2 116:16 121:13,19 129:4 130:1,20,21,22,24 131:11,11 135:1 <b>txi</b> 98:12 <b>type</b> 54:25 96:16,17 148:23 <b>types</b> 34:25	<b>ultimately</b> 23:5 130:12 <b>unable</b> 29:12,17 80:2 124:3 <b>undergoing</b> 11:16 <b>understand</b> 6:1,5 17:2,25 19:2,4,11 30:14 31:16 44:7 51:14 59:16,24 71:5,18 73:17 76:21 80:20 87:25 90:10 91:2 101:6 107:4 118:17 124:14 125:4 131:20 132:6,23 143:3 <b>understanding</b> 5:23 6:4 7:5 8:6 8:25 12:13 56:25 57:4,5,8,13,17 80:18 84:12 85:9 100:16 131:1 <b>understood</b> 22:19 62:17 100:10 <b>undertake</b> 118:16 <b>undue</b> 140:23 <b>unencumbered</b> 91:14 <b>unfair</b> 78:14 <b>unfortunate</b> 15:9 <b>unfortunately</b> 13:21 110:2 <b>unilateral</b> 25:20,25 25:25 <b>union</b> 134:12 <b>unions</b> 131:7 <b>unique</b> 95:5 <b>united</b> 1:1 3:11 74:25 75:7,18 131:5,7,23 133:11 <b>units</b> 110:10 <b>universe</b> 110:3 <b>unspecified</b> 42:1 <b>unsuccessful</b> 82:4 <b>untapped</b> 91:17 <b>unusual</b> 140:17 141:15,16,17	144:5 <b>unusually</b> 141:7 <b>upper</b> 100:1 102:20 140:2,12 141:2,3 141:20,22 142:5,8 143:13,17,18,18 145:15 <b>urging</b> 71:11 72:18 <b>usair</b> 75:18 <b>use</b> 16:9 17:5 18:10 19:19 48:19,24 78:13 86:16 102:6 104:22 109:21 110:13,21 130:10 133:9 135:17 138:14 142:6 143:11 148:8 <b>uses</b> 93:6 <b>usual</b> 141:6	133:14 134:22 <b>viewed</b> 95:4 <b>views</b> 52:20,24 53:5 53:18,20,24 138:19 <b>virtually</b> 48:15 116:1 <b>virtue</b> 101:1 <b>volunteered</b> 125:11 <b>vs</b> 1:6
<b>W</b>				
<b>waited</b> 65:20 <b>want</b> 7:25 36:17 53:13 61:9 65:18 69:21 86:23 106:9 109:8,15 113:12 115:24 125:17 126:24 128:6 140:22 142:25 144:7,11,12 <b>wanted</b> 14:19 15:16 58:5 103:25 112:2 128:17 <b>washington</b> 2:5 <b>wasnt</b> 6:22 7:15,20 11:11 22:6 36:16 87:23 106:13 124:20 145:8,9 <b>way</b> 42:12 44:16 53:21,22 69:21 85:2 99:9 102:19 104:25 107:10,25 108:1,9,14,15,17 109:4 124:4 140:17 141:17 143:4,5 148:10 <b>ways</b> 56:4 102:17 140:18 <b>weak</b> 39:13 102:10 102:10 112:4 120:3,12 127:13 <b>weakened</b> 39:20 41:20 96:5,8,14 96:18 <b>weaker</b> 100:25 102:10,14,21				

105:4 112:22 <b>web</b> 45:22 <b>wednesday</b> 15:6 <b>week</b> 33:2,4 41:10 56:10,22 85:13 <b>weeks</b> 41:10,22 42:1,2 <b>weight</b> 140:23 <b>weiss</b> 1:24 <b>wellbeing</b> 100:13 103:3 <b>went</b> 8:15 46:16 104:9 116:23 124:2 130:12 <b>western</b> 62:12 <b>weve</b> 124:2,11 142:17,25 <b>wharton</b> 1:24 <b>whats</b> 6:23,23 22:17 23:3 30:10 38:5,7 90:13 102:12 107:10,11 109:5,7 115:14 136:11 142:11,15 142:16 <b>whos</b> 68:3,3 138:8 <b>wide</b> 94:17,18 <b>wider</b> 98:9,22 <b>winter</b> 76:11 <b>wisconsin</b> 2:5 <b>withdrawn</b> 55:4 99:4 <b>witness</b> 3:2 4:6 18:12 51:16 52:7 66:25 72:24 78:11 78:14 79:16 84:25 121:18 125:11 132:15 139:24 146:1,8 147:10,13 148:25 151:14 152:9 <b>witnesses</b> 79:20 <b>women</b> 148:7 <b>wondered</b> 130:8 <b>wont</b> 15:11 <b>word</b> 15:9 51:17 <b>words</b> 48:15	<b>work</b> 11:2,15 12:14 33:7,12,22 36:8 36:12,18 59:4 106:20 111:1 124:6,10,13,16 148:1 <b>worked</b> 111:2 148:25 150:11 <b>workers</b> 149:8 150:7 <b>working</b> 19:8 39:20 46:18 <b>world</b> 16:3,7 22:5 22:18 24:6 40:5 83:7,8,9 110:14 110:14 111:25 113:15 117:21 137:9,12,15,18,20 138:6,9 142:12 <b>worse</b> 54:8 84:15 119:11,13 <b>worth</b> 42:19 <b>wouldnt</b> 69:6 82:21 104:16 140:13 148:9 <b>wouldve</b> 74:20 <b>written</b> 146:23 <b>wrong</b> 26:22 126:23,24 139:5 <b>wrote</b> 117:22  <b>X</b> <b>xio1556</b> 152:20  <b>Y</b> <b>yeah</b> 31:25 40:13 41:7,10 51:9 52:1 55:22 58:21 62:10 70:10 71:22 84:6 86:22 89:5 93:9 120:21 136:23 138:1 140:4 142:21 143:22 144:21 147:2,5 <b>year</b> 76:9 81:24 82:4 101:16,17 <b>years</b> 7:19 43:6,13 58:4,4,4 73:1	81:25 82:1,2,3,5 115:3,4,5,6,7 <b>yesterday</b> 51:19 106:7 112:17 121:16 135:8,12 143:16 <b>yield</b> 90:13,16 136:14,17 <b>yielded</b> 138:14 <b>yields</b> 90:7,9,10,12 90:12,14 101:12 <b>york</b> 2:2,2 3:22 70:8 117:6,12 <b>youve</b> 10:23 48:6 49:14 62:25 65:10 66:3 74:10 81:6 82:16 88:14 97:8 99:18 109:11 111:2 117:14 144:10 146:8 148:24  <b>Z</b>  <b>0</b> <b>0</b> 65:17,17 <b>00</b> 61:17 <b>000</b> 103:19 <b>022917</b> 1:2 <b>028</b> 65:17 <b>065</b> 143:23 <b>07</b> 151:8 <b>08033</b> 1:22 <b>08540</b> 1:14  <b>1</b> <b>1</b> 66:9 128:13 143:19,20,21,22 <b>10</b> 58:4 61:14 76:12 85:14,19,22 <b>100</b> 76:9,10 <b>10019</b> 2:2 <b>10th</b> 70:14,17,21 71:25 72:1,5,8 74:21 <b>11</b> 61:17 76:14 80:5 <b>1110</b> 79:1,3 <b>116</b> 3:21	<b>12</b> 3:21 42:19 78:24 81:25 117:5,12 128:5,11 147:3,4 147:9 <b>1285</b> 2:1 <b>12th</b> 79:8 <b>13</b> 133:3 152:21 <b>14</b> 70:6,24 71:4 81:17,17 151:11 151:16,18 <b>15</b> 70:5,11,22,23 93:7,15,20 134:4 <b>153</b> 65:17 <b>17</b> 76:5,6 <b>18</b> 78:4 123:6,8 <b>180</b> 78:5 <b>19</b> 30:2 152:21 <b>1987</b> 101:14 <b>1988</b> 101:14 <b>1989</b> 101:17 <b>1991</b> 3:21 117:5,12 <b>1999</b> 72:25 81:18 81:21 <b>19some</b> 29:25 <b>1st</b> 72:25  <b>2</b> <b>2</b> 151:8,11,16,18 <b>20</b> 50:15 58:4 76:12 76:22 79:23,24 85:17,24 <b>2000</b> 76:9 81:24 <b>2001</b> 3:10 66:9 74:24 75:7,19 76:12 78:24 79:8 82:23 83:5 84:10 85:14 <b>20016</b> 2:5 <b>2009</b> 72:25,25 <b>2013</b> 1:11 4:2 152:22 <b>202</b> 2:6 <b>2044912</b> 152:21 <b>21</b> 83:12 84:7 <b>212</b> 2:2 <b>22</b> 30:3 32:11 <b>23</b> 1:11	<b>23rd</b> 4:2 <b>24</b> 152:22 <b>249</b> 93:1 <b>250</b> 2:5 <b>258</b> 1:22 <b>29</b> 100:21 128:11 <b>2nd</b> 3:10 74:24 75:6,19  <b>3</b> <b>3</b> 76:16,24 77:1 103:19 133:3 143:19 <b>30</b> 1:16 4:4 76:13 76:22 82:2 85:20 115:4,4 128:5 147:3,4 <b>314</b> 1:19 <b>32</b> 1:14 <b>33</b> 20:5,17 36:4,24 37:3,7,8,17 42:16 <b>34</b> 54:5 <b>36</b> 42:18 123:5,13 <b>37</b> 128:13 <b>3733869</b> 2:2 <b>3758</b> 100:5 <b>3rd</b> 74:7  <b>4</b> <b>4</b> 3:4 <b>40</b> 76:13,23 <b>41</b> 28:10,11,15 29:17,19,21,22 30:2,2 <b>42</b> 97:17 <b>44</b> 61:14 <b>4530</b> 2:5 <b>49</b> 126:10  <b>5</b> <b>5</b> 143:20,21,22 <b>50</b> 76:10 115:3 <b>51</b> 127:10 <b>53</b> 120:1,6,7  <b>6</b> <b>6</b> 152:21 <b>63105</b> 1:19
--	--	---	--	--

65 3:8  
6594656 2:6

---

7

---

700 1:14  
7333 1:18  
75 3:10  
7959002 1:23

---

8

---

81 3:13  
856 1:23  
8626800 1:19

---

9

---

9 1:16 4:4  
97 3:15 78:5  
99 3:18  
9th 72:7,7 74:15,19